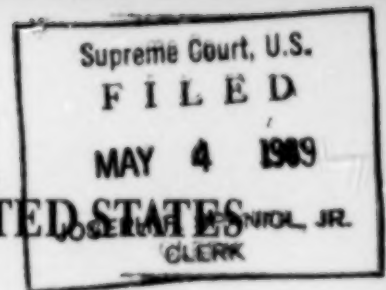


No. 88-42

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1988



OLAF E. HALLSTROM and MARY E. HALLSTROM,
Petitioners,

v.

TILLAMOOK COUNTY, A MUNICIPAL CORPORATION,
Respondent.

**ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**BRIEF AMICI CURIAE OF
SIERRA CLUB, DEFENDERS OF WILDLIFE, INC.,
NATIONAL AUDUBON SOCIETY, NATURAL RESOURCES
DEFENSE COUNCIL, INC.,
AND THE WILDERNESS SOCIETY IN SUPPORT
OF THE PETITIONERS**

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QUESTION PRESENTED

The Resource Conservation and Recovery Act, 42 U.S.C.A. §§ 6901-6987 (West 1983 & Supp. 1989) ("RCRA"), provides for citizen enforcement through "citizen suits." RCRA requires that the commencement of each citizen suit be preceded by sixty days' notice from the citizen plaintiff to the Administrator of the United States Environmental Protection Agency, the State in which the alleged violation occurred and the alleged violator.¹

The question presented is whether the sixty-day notice requirement is jurisdictional (requiring dismissal of the citizen suit and subsequent refiling sixty days after notice) or procedural (requiring a stay instead of a dismissal).²

1. The particular statute in issue, 42 U.S.C.A. § 6972 (West 1983 & Supp. 1989), is reprinted in full for the Court's information in Appendix B.

2. *Amici* note that this is how the Petitioners have framed the question presented in their *Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit*. Although under a procedural rule a stay usually will be sufficient to cure the deficient notice, in certain circumstances it may instead be appropriate for the court to dismiss the action. *See infra* at 19 n. 11.

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DEFENSE COUNCIL, INC., AND
THE WILDERNESS SOCIETY IN SUPPORT
OF THE PETITIONERS

All parties have consented in writing to the filing of this brief on behalf of *amici curiae* Sierra Club, Defenders of Wildlife, Inc., National Audubon Society, Natural Resources Defense Council, Inc., and The Wilderness Society in support of the Petitioners.¹

STATEMENT OF INTEREST OF AMICI CURIAE

Amici Curiae are nonprofit public interest organizations with large nationwide memberships² whose broad purposes include both the enjoyment, study and exploration of this country's vast national resources and the enlistment of public interest in and support for the protection, conservation and preservation of these resources.

1. Petitioners' consent and Respondent's consent are being filed concurrently with the Clerk of the Court in accordance with Rule 36.2 of the Rules of the Supreme Court of the United States.

2. Appendix A hereto provides additional information regarding the individual *amicus* organizations.

Amici participate extensively in and sponsor numerous recreational activities, educational programs and scientific and other research projects to promote a better appreciation and understanding of our natural resources and attendant environmental concerns.

Amici have been actively involved at the federal, state and local level in the comment process on new environmental legislation and amendments to existing legislation and have also instituted or participated in numerous administrative and judicial proceedings to ensure the effective implementation and enforcement of this country's environmental laws, including the Resource Conservation and Recovery Act, 42 U.S.C.A. §§ 6901-6987 (West 1983 & Supp. 1989) ("RCRA"), the statute at issue in this case. As an important part of their efforts to promote compliance with federal environmental laws, *amici* have on numerous occasions used the citizen suit provisions in RCRA and other environmental statutes to enjoin public or private activities which violate statutory standards or to compel government agencies to perform statutorily mandated duties. Accordingly, *amici* have a direct interest in the Court's holding in this case, particularly as to how it will impact future citizen suits.

SUMMARY OF ARGUMENT

Prior to 1970, there was a paucity of federal statutes and regulations to protect and conserve this country's environment and natural resources. Because of deep and widespread public concern for the impact of rapid growth on the environment, beginning with the National Environmental Policy Act of 1969 and the Clean Air Act Amendments of 1970, Congress passed and Presidents Nixon, Ford, Carter and Reagan signed into law a far-reaching and complex set of environmental statutes.

These statutes provided for enforcement of their provisions by federal and state agencies. Commencing with the Clean Air Act Amendments, Congress in addition

sought to augment government enforcement and to enlist the help of citizens by authorizing citizens to bring suit in federal courts to enjoin violative activities and to compel government agencies to perform their statutory duties. Accordingly, citizen suit provisions were included in substantially identical form in at least thirteen major environmental statutes, including the Resources Conservation and Recovery Act ("RCRA"), the statute at issue in this case. Comparable provisions were also included in at least five other statutes affecting such diverse areas as energy, consumer protection and civil defense.

To encourage and enable government agencies to carry out their enforcement responsibilities, Congress included in the citizen suit provisions the sixty-day notice provision at issue in this case. Congress did not intend, and therefore did not provide, that the notice provision should be a jurisdictional barrier to citizen action, nor did it intend or provide that necessary relief should be delayed when government agencies decline or refuse to act or waive notice. Accordingly, Congress enacted a notice provision that is akin to an exhaustion of remedies requirement. Although compliance should be required in all appropriate cases, the provision should be held to be waivable and held inapplicable when strict compliance would otherwise be futile or lead to anomalous results, or preclude essential temporary relief.

Indeed, treating the notice provision as an inflexible, formalistic jurisdictional barrier would vitiate Congress' purpose of encouraging citizen enforcement and lead to harsh or absurd results. Without advancing any legitimate purpose, a jurisdictional construction would also disable federal courts from providing essential temporary injunctive relief in cases when notice would otherwise be waived or excused. Finally, a jurisdictional construction would arm polluters with the weapon of a jurisdictional objection

pertaining not to themselves, but to governmental agencies who have waived notice or have no interest in raising the notice issue.

Although the issue as framed is deceptively narrow and simple, i.e., is the RCRA notice provision "procedural" or "jurisdictional," the Court's ruling may well impact each of the statutes providing for citizen enforcement. Parties effected by those statutes are not before the Court. A "jurisdictional" construction would seriously impede citizen enforcement not only of RCRA, but of each of those statutes. Under the Endangered Species Act, for example, such a jurisdictional interpretation could lead to the extinction or widespread destruction of a species while citizens, whom Congress intended to encourage, waited unnecessarily and helplessly for the sixty-day period to elapse.

ARGUMENT

I.

RCRA IS ONE OF A COMPREHENSIVE SET OF REGULATORY STATUTES INTENDED TO PROTECT THE ENVIRONMENT, AND THIS COURT SHOULD THEREFORE BE AWARE OF THE POTENTIAL IMPACT ITS DECISION IN THIS CASE WILL HAVE ON MANY ENVIRONMENTAL STATUTES

In 1976, Congress passed and President Ford signed into law the Resource Conservation and Recovery Act (codified at 42 U.S.C.A. §§ 6901-6987 (West 1983 & Supp. 1989)) ("RCRA") to regulate the disposal of hazardous wastes and minimize the harms to health and environment caused by unsafe disposal.³

3. "The Resource Conservation and Recovery Act of 1976 is a multifaceted approach toward solving the problems associated with the 3-4 billion tons of discarded materials generated each year and the problems resulting from the anticipated 8% annual increase in the

RCRA is one of a comprehensive set of federal regulatory statutes enacted during the 1970s in response to widespread public concern over the devastating environmental impact resulting from this country's rapid growth. Commencing with the National Environmental Policy Act of 1969 (codified at 42 U.S.C.A. §§ 4321-4370 (West 1977 & Supp. 1989)) ("NEPA") and the Clean Air Act Amendments of 1970 (codified at 42 U.S.C.A. §§ 7401-7642 (West 1983 & Supp. 1989)) ("Clean Air Act Amendments"), Congress enacted numerous environmental statutes, including the Federal Water Pollution Control Act (codified at 33 U.S.C.A. §§ 1251-1375 (West 1986 & Supp. 1989)) ("Clean Water Act"), the Endangered Species Act (codified at 16 U.S.C.A. §§ 1531-1543 (West 1985 & Supp. 1989)) and the Comprehensive Environmental Response, Compensation, and Liability Act (codified at 42 U.S.C.A. §§ 9601-9675 (West 1983 & Supp. 1989)) ("CERCLA"), which, together with other statutes, provide a regulatory framework for protecting and conserving the environment.⁴ Because RCRA is but one component of a

volume of such waste." H. Rep. No. 1491, 94th Cong., 2d Sess. 2 (1976), reprinted in 1976 U.S. CODE CONG. & AD. NEWS 6238, 6239. See generally Note, *EPA's Responsibilities Under RCRA: Administrative Law Issues*, 9 Ecology L.Q. 555, 555 (1981).

4. Other statutes include the Safe Drinking Water Act (codified at 42 U.S.C.A. §§ 300f-300j-10 (West 1982 & Supp. 1989)); the Toxic Substance Control Act (codified at 15 U.S.C.A. §§ 2601-2671 (West 1982 & Supp. 1989)); the Marine Protection, Research, and Sanctuaries Act (codified at 33 U.S.C.A. §§ 1401-1445 (West 1986 & Supp. 1989)); the Surface Mining Control and Reclamation Act (codified at 33 U.S.C.A. §§ 1201-1328 (West 1986 & Supp. 1989)); the Noise Control Act (codified at 42 U.S.C.A. §§ 4901-4918 (West 1983 & Supp. 1989)); the Act to Prevent Pollution From Ships (codified at 33 U.S.C.A. §§ 1901-1912 (West 1986 & Supp. 1989)); the Outer Continental Shelf Lands Acts (codified at 43 U.S.C.A. §§ 1331-1356 (West 1986 & Supp. 1989)); and the Deepwater Port Act (codified at 33 U.S.C.A. §§ 1501-1524 (West 1986 & Supp. 1989)). The purpose provisions of these statutes are set forth alphabetically for the Court's information in Appendix B.

complex set of statutes, the Court should be aware of the potential impact its decision will have on these statutes.

II.

THE LEGISLATIVE HISTORY PERTAINING TO CITIZEN SUIT PROVISIONS AND NOTICE REQUIREMENTS DEMONSTRATE THAT CONGRESS' PRIMARY CONCERN IN ENACTING THESE PROVISIONS WAS TO ENCOURAGE CITIZEN PARTICIPATION IN THE ENFORCEMENT OF ENVIRONMENTAL LEGISLATION

A. Citizen Suit Provisions, Which Were First Codified as Part of the Clean Air Act Amendments, Were Enacted to Encourage Citizen Participation in the Enforcement of Environmental Legislation as a Supplement to Agency Enforcement.

There was a notable absence of federal environmental regulation prior to the enactment of NEPA in 1969 and the Clean Air Act Amendments in 1970. To the extent federal environmental regulations existed, often the only available means for private citizens to participate in the enforcement of these regulations was to attend public hearings. Accordingly, violations of environmental statutes often continued unabated when the federal or state enforcement agencies chose not to act, or for lack of resources could not act. See Note, *Notice by Citizen Plaintiffs in Environmental Litigation*, 79 Mich. L. Rev. 279, 299 (1980). See generally Miller, *Private Enforcement of Federal Pollution Control Laws, Part I*, 13 Env'tl. L. Rep. 10309, 10310 (1983).

With the passage of the Clean Air Act Amendments, Congress afforded private citizens the right to sue to enforce the provisions of an environmental statute. The citizen suit provision in the Clean Air Act Amendments became the model for citizen suit provisions that were included in substantially identical form in nearly every subsequent new environmental statute, in amendments to existing federal environmental statutes and in at least five

nonenvironmental regulatory statutes.⁵ Because of the paucity of relevant legislative history of the citizen suit provisions in these other statutes,⁶ the starting point to understanding Congress' purposes is the legislative history of the Clean Air Act Amendments.

The citizen suit provision in the Clean Air Act Amendments recognized the need for citizen participation in the enforcement of the Clean Air Act both to help achieve the Act's goals and to augment the limited resources of federal and state agencies:

Citizens in bringing such actions are performing a public service. The limited resources of many State enforcement agencies, bearing the first line of responsibility under this bill, will be fully extended. This [citizen suit] provision, requiring 30 days notice to State and Federal agencies, in which they may initiate abatement proceedings, will allow many violations to come to their attention which otherwise might escape notice.

116 Cong. Rec. S33,103 (daily ed. Sept. 22, 1970) (memorandum submitted by Senator Muskie). See also 116 Cong. Rec. S42,387 (daily ed. December 18, 1970) (remarks of Senator Muskie) ("The Senate committee felt it would be impossible to do the total job of air pollution cleanup relying wholly upon the Federal bureaucracy.").

5. See discussion *infra* at 25-26 and Appendix B.

6. See, e.g., *Maine Audubon Society v. Purslow*, 672 F. Supp. 528, 529 n.3 (D. Maine 1987) ("In enacting the citizen suit of the Endangered Species Act, Congress appeared to have adopted the notice requirement of other statutes without discussion" [citing S. Rep. No. 307, 93rd Cong. 1st Sess., reprinted in 1973 U.S. CODE CONG. & AD. NEWS 2989, 2999]). See generally Miller, *Private Enforcement of Federal Pollution Control Laws, Part I*, 13 Env'tl. L. Rep. 10309, 10311 (1983) ("There are perhaps no sections of the environmental statutes where precedent under one statute so clearly applies to others.").

While providing for citizen enforcement, Congress anticipated that governmental agencies, federal and state, would be primarily responsible for enforcement.⁷ Private citizens were encouraged to uncover violations that otherwise might escape notice, and motivate the agencies to take action. See S. Rep. No. 1196, 91st Cong., 2d Sess. 36-37 (1970) (report of Public Works Committee) ("Authorizing citizens to bring suits for violations of standards should motivate governmental agencies charged with the responsibility to bring enforcement and abatement proceedings. . . ."). However, when the government agencies failed to act, citizens should be "unconstrained" to bring enforcement actions, and the federal courts "should not be hesitant to consider them." *Id.*

Thus, by encouraging private citizens to support governmental enforcement and empowering citizens to initiate enforcement actions themselves, Congress sought to accomplish the Clean Air Act's stated purpose to protect and enhance the quality of this country's air resources. Citizen plaintiffs were therefore not to be viewed as "nuisances or troublemakers, but rather as welcome participants in the vindication of environmental rights." *Friends of the Earth v. Carey*, 535 F.2d 165, 175 (2d Cir. 1976), *cert. denied*, 434 U.S. 902 (1977). See *Natural Resources Defense Council v. Train*, 510 F.2d 692, 700 (D.C. Cir. 1975) ("[T]he citizen suit provisions reflected a deliberate choice by Congress to widen citizen access to the courts as a supplemental and effective assurance that the [Clean Air] Act would be implemented and enforced").

7. Indeed, the citizen suit provision in the Clean Air Act Amendments contains a statutory bar to the filing of a citizen suit where "the Administrator or State has commenced and is diligently prosecuting" its own enforcement action. 42 U.S.C.A. § 7604 (West 1983). See *Gwaltney of Smithfield v. Chesapeake Bay Foundation, Inc.*, 484 U.S. ___, 108 S. Ct. ___, 98 L. Ed. 2d 306, 318 (1987) (relating to similar provision in Clean Water Act, 33 U.S.C.A. § 1365(b)(1)(B) (West 1986)).

B. The Notice Requirement Was Not Added to Create a Rigid Barrier to Citizen Suits, But Rather to Encourage Agency Enforcement.

Although Congress envisaged private citizens undertaking an essential role in the enforcement of the Clean Air Act, proponents as well as opponents of the amendments to the Act expressed concern that citizen suits could overburden the courts and interfere with government enforcement of alleged violations. See *Air Pollution—1970: Hearings on S. 3229, S. 3466 & S. 3546 Before the Subcomm. on Air and Water Pollution of the Senate Comm. on Public Works*, 91st Cong., 2d Sess. 1184 (1970). For example, proponents were careful to note that the proposed citizen suit provisions did not provide for the award of damages to private plaintiffs, 42 U.S.C.A. § 7604(a) (West 1983), and empowered the courts to award attorneys' fees and costs to the prevailing party, thereby deterring frivolous lawsuits, 42 U.S.C.A. § 7604(d) (West 1983).

First of all, it should be noted that the bill makes no provision for damages to the individual. It therefore provides no incentives to suit other than to protect the health and welfare of those suing and others similarly situated. It will be the rare, rather than the ordinary person, I suspect, who, with no hope of financial gain and the very real prospect of financial loss, will initiate court action under the bill.

116 Cong. Rec. S33,104 (daily ed. Sept. 22, 1970) (remarks of Senator Hart).

The Senate subcommittee also included a notice requirement. As originally drafted, it required citizen plaintiffs to give thirty days notice to the Environmental Protection Agency ("EPA"), its field representative, the state air pollution control agency and the alleged violator before filing suit. See S. 4358, 91st Cong., 2d Sess., 116 Cong. Rec. 32,381 (1970). Committee members believed

that the notice provision would serve to trigger administrative action to remedy the alleged violation, thereby eliminating the need for the private citizen to seek relief in the courts.

[B]efore any citizen can bring an action, he is required to notify the enforcement agency concerned of his intent to do so, and the specific, alleged violation which he has in mind. *In other words, the idea is to use citizens to trigger the enforcement mechanism.* If that enforcement mechanism does not respond, then the citizen has his right to go to court.

116 Cong. Rec. S33,103 (daily ed. Sept. 22, 1970) (remarks of Senator Muskie) (emphasis added).

In its report on the proposed amendments to the Clean Air Act, however, the Senate Committee on Public Works emphasized that the notice requirement, though intended to encourage intervention by the appropriate government agencies, was not meant to discourage citizen suits.

The regulations to be promulgated by the Secretary [of the Interior] should reflect simplicity, clarity, and standardized form. The regulations should not require notice that places impossible or unnecessary burdens on citizens but rather should be confined to requiring information necessary to give a clear indication of the citizens' intent.

S. Rep. No. 1196, 91st Cong., 2d Sess. 37 (1970). Thus, the citizen plaintiff was not expected to provide detailed or technical information so long as the federal and state agencies and the alleged violator understood the general scope of the citizen's allegations.

Without comment, a joint House-Senate conference committee responsible for resolving inconsistencies between the House and Senate versions of the bill lengthened the notice requirement to sixty days. Conf. Rep. No. 1783, 91st Cong., 2d Sess. 1, 55 (1970) *reprinted in* 1970

U.S. CODE CONG. & AD. NEWS 5374-5391. This version of the notice provision was enacted into law as part of the Clean Air Act Amendments.

C. Although the Federal Courts Are Divided, Those That Follow the Pragmatic Rather Than the Jurisdictional Approach Best Serve the Underlying Purposes of the Notice Requirement.

Those federal courts that have considered the notice requirement in the Clean Air Act Amendments and other federal environmental statutes have consistently recognized that Congress sought to facilitate and encourage citizen involvement while preserving the primary enforcement role of the federal and state regulatory agencies and shielding the federal courts from an unmanageable number of citizen suits. *See, e.g., Natural Resources Defense Council v. Callaway*, 524 F.2d 79, 84 n.4 (2d Cir. 1975) (purpose of sixty-day notice requirement of Clean Water Act is to give the administrative agencies time to investigate and act on an alleged violation); *City of Highland Park v. Train*, 519 F.2d 681, 690-91 (7th Cir. 1975), *cert. denied*, 424 U.S. 927 (1976) (Congress intended to provide for citizen suits in a manner least likely to clog the courts and most likely to trigger agency enforcement). These courts, however, have divided on how to interpret the notice requirement to best serve these congressional purposes.

The federal circuit courts have generally split into two groups, adopting either a "pragmatic approach" toward the notice requirement—in essence treating the notice requirement in environmental statutes as procedural—or a "jurisdictional approach," which requires dismissal for lack of subject matter jurisdiction if the citizen plaintiff has not strictly complied with the sixty-day notice requirement. The "pragmatic approach" has been adopted by the Second, Third and Eighth Circuits, *see, e.g., Friends of the Earth v. Carey*, 535 F.2d 165, 175 (2d Cir. 1976) *cert. denied*, 434 U.S. 902 (1977); *Proffitt v. Comm'rs, Township of Bristol*, 754 F.2d 504, 506 (3d Cir. 1985); *Hempstead*

County and Nevada County Project v. United States Environmental Protection Agency, 700 F.2d 459, 463 (8th Cir. 1983), while the "jurisdictional approach" has been adopted by the First, Sixth, Seventh and Ninth Circuits, see, e.g., *Garcia v. Cecos Int'l, Inc.*, 761 F.2d 76, 78 (1st Cir. 1985); *Walls v. Waste Resource Corp.*, 761 F.2d 311, 316 (6th Cir. 1985); *City of Highland Park v. Train*, 519 F.2d 681, 691 (7th Cir. 1975); *Hallstrom v. Tillamook County*, 844 F.2d 598, 600-601 (9th Cir. 1988).⁸

The courts adopting the pragmatic approach reason that a rigid, literal reading of the notice requirement would hinder rather than encourage the filing of citizen suits, thus frustrating Congress' intent in adopting the citizen suit provisions that "any citizen [should be able] to bring action directly against polluters . . . or against the Administrator grounded on his failure to discharge his duty to enforce the statute against polluters." *Natural Resources Defense Council v. Train*, 510 F.2d at 700. See *Friends of the Earth v. Carey*, 535 F.2d at 172; *Proffitt v. Commr's*, 754 F.2d at 506. A pragmatic rather than a jurisdictional reading of the notice requirement ensures that the regulatory agencies have been given sufficient opportunity to act on the alleged violation but does not discourage citizen plaintiffs from participating in the enforcement process. See *Proffitt*, 754 F.2d at 506 (sixty-day notice requirements of Clean Water

8. While some courts have cited *Natural Resources Defense Council v. Train*, 510 F.2d 692 (D.C. Cir. 1974) in support of the pragmatic approach, the D.C. Circuit in that case found jurisdiction on other grounds, namely under the "savings" clause, Section 505(e), of the Clean Water Act. In dictum, however, the court indicated that it would adopt the pragmatic approach if it were required to interpret the notice requirement of the Clean Water Act. See *id.* at 703 ("Sound discretion bids a court stay its hand upon petition by the Administrator where it has reason to believe that further agency consideration may resolve the dispute. . . . However, the court has jurisdiction and may maintain the action on its docket in a suspense status, and even grant temporary relief.").

Act and RCRA "should be applied flexibly to avoid hindrance of citizen suits through excessive formalism"); *Susquahanna Valley Alliance v. Three Mile Island*, 619 F.2d 231, 243 (3d Cir. 1980) ("We agree . . . that reading [the notice requirement of the Clean Water Act] to require dismissal and refiling of premature suits would be excessively formalistic.").

The pragmatic approach also avoids the waste of judicial resources which results under the jurisdictional approach, which would require the dismissal and refiling of an action after months, or in some cases years, of legal proceedings due solely to a failure to meet the formal notice requirements, even when the defendants are not prejudiced by the failure to give such notice. As the Third Circuit Court of Appeal noted in *Pymatuning Water Shed Citizens v. Eaton*, 644 F.2d 995, 996 (3d Cir. 1981),

Requiring [the dismissal and refiling of actions] after proceeding to the stage of the case presently before us would . . . waste judicial resources. Moreover, the appellant's argument, if adopted, would frustrate citizen enforcement of the [Clean Water] Act. Almost two years have now passed since the filing of the complaint in this action and in the meantime, the alleged flow of sewage has continued unabated.

See *State of California v. Dept. of Navy*, 431 F.Supp. 1271, 1278-79 (N.D. Cal. 1977), *aff'd*, 624 F.2d 885 (9th Cir. 1980) ("[N]o purpose would be served by dismissing here since plaintiffs could and would *immediately* refile this lawsuit. [Footnote omitted]. Dismissal now would be, in effect, the ultimate disservice to judicial economy.").⁹

9. It also should be noted that if failure to give strictly complying sixty-day notice creates a jurisdictional barrier, defendants will be encouraged, even as statutory violations continue unabated, to raise the jurisdictional sword for the first time on appeal or to seek to reopen adverse final judgments. The resultant need to refile the action and relitigate the merits in order to enforce statutory standards would be a disservice to judicial economy.

Those courts adopting the jurisdictional approach have interpreted the language of the notice provision as a jurisdictional barrier. They reason that where Congress has "clearly" set forth the requirements for notice, the courts need not, and should not, engage in any speculative interpretation of the notice provision. "The notice requirement is not a technical wrinkle or superfluous formality that federal courts may waive at will. . . . [I]t is part of the jurisdictional conferral from Congress that cannot be altered by the courts." *Garcia*, 761 F.2d at 79. See also *Hallstrom*, 844 F.2d at 600 (citing *Garcia*); *Walls*, 761 F.2d at 316. They view the express exceptions to the sixty-day notice requirement under certain circumstances (e.g., the exception in RCRA for hazardous waste, 42 U.S.C.A. § 6972(b)(1)(A), and (2)(A) (West Supp. 1989)), as further evidence that Congress intended the notice requirement to be a rigid jurisdictional barrier to citizen suits. See, e.g., *Hallstrom*, 844 F.2d at 601; *Walls*, 761 F.2d at 316. To ignore the sixty-day notice requirements would in their view "constitute[sic], in effect, judicial amendment in abrogation of explicit, unconditional statutory language." *Garcia*, 761 F.2d at 78, quoting *City of Highland Park v. Train*, 374 F. Supp. 758, 766 (N.D. Ill. 1974), *aff'd* 519 F.2d 681 (7th Cir. 1975), *cert. denied* 424 U.S. 927 (1976).

These courts reason further that the notice requirement was adopted primarily to encourage regulatory agencies to step in and obtain a nonjudicial resolution of the alleged violation, and that this goal would be thwarted if citizens were allowed to file suit prior to the completion of the sixty-day notice period. See *Hallstrom*, 844 F.2d at 601; *Garcia*, 761 F.2d at 82. Simply staying the proceeding for sixty days to provide the parties with an opportunity to resolve the dispute would in their view not satisfy the statute, for "once a suit is filed, positions become hardened, parties incur legal fees, and relations become adversarial so that cooperation and compromise is less likely." *Hallstrom*, 844 F.2d at 601. Thus, these courts have concluded that nothing short of dismissal and the giving of

full sixty-day notice will suffice to encourage the non-judicial resolution of the environmental conflict at issue.

For the reasons that follow, the pragmatic approach best serves the statutory purpose.

III.

THE COURT SHOULD APPLY A PRAGMATIC APPROACH TO THE SIXTY-DAY NOTICE REQUIREMENT TO ACCOMPLISH RCRA'S GOALS AND AVOID ANOMALOUS RESULTS

A. The Statute does not Preclude Federal Jurisdiction and to Interpret it to do so would Defeat its Purpose.

As noted above, *supra* at 14, courts adopting a formalistic jurisdictional reading of the sixty-day notice requirements in environmental statutes have concluded that the "explicit, unconditional" language requiring citizen plaintiffs to give sixty-day notice prior to commencing an action imposes an obligation on the courts to apply the notice requirement literally and dismiss any citizen suits where notice is defective.

This Court has repeatedly held, however, that federal statutes should be interpreted to comport with and promote the purposes of the entire statute. See, e.g., *Bob Jones University v. United States*, 461 U.S. 574, 586 (1983) ("It is a well-established canon of statutory construction that a court should go beyond the literal language of a statute if reliance on that language would defeat the plain purpose of the statute. . . ."); *Trans Alaska Rate Cases*, 436 U.S. 631, 643 (1978). Where a literal reading of a statute would lead to "absurd or futile results" or results which are "plainly at variance with the policy of the legislation as a whole," this Court has followed that purpose underlying the statute rather than its literal words." *United States v. American Trucking Ass'ns*, 310 U.S. 534, 543 (1940), quoting *Ozawa v. United States*, 260 U.S. 178, 194 (1922).

As the cases discussed below demonstrate, a formalistic jurisdictional reading of the notice requirement contained in RCRA and other environmental statutes would produce harsh and absurd results that would frustrate, rather than further, the underlying congressional purpose to protect and conserve the environment. In such cases, courts should have the discretion to interpret the notice requirement flexibly in a manner that avoids such anomalous results while furthering the congressional purpose.

B. The Pragmatic Approach Avoids the Unfair and Absurd Results that would Arise from a Formalistic Application of the Notice Requirement.

In *Friends of the Earth v. Carey*, 535 F.2d 165 (2d Cir. 1976), *cert. denied*, 434 U.S. 902 (1977), plaintiffs filed suit under the Clean Air Act to enjoin an increase in New York City transit fares and to enforce the "clean air" provisions of the Transportation Control Plan for the New York metropolitan area. *Id.* at 168. Before filing suit, plaintiffs sent proper sixty-day notices to the Governor of New York, the EPA, the State environmental protection agency and to each of fifteen agents and agencies of the State to whom some enforcement authority had been delegated, including the Metropolitan Transit Authority ("MTA"). *Id.* at 174. After filing suit, plaintiffs added the New York City Transit Authority ("TA"), which was responsible for authorizing the fare increase, as an additional defendant. The district court refused to enjoin the fare increase primarily on the basis that the TA received inadequate notice, even though plaintiffs sent proper notice to the MTA, the TA's sister agency, and to both the chairman of the TA and its general counsel in their capacities as MTA rather than TA officials. *Id.* On appeal, the Second Circuit found the district court's "technical, crabbed reading" of the notice requirement to be "completely at odds with the announced purpose of the statute, which looks to substance rather than to form in an effort to facilitate citizen involvement," and reinstated the complaint as to the TA. *Id.* at 175. See also *National*

Wildlife Federation v. Coleman, 400 F.Supp. 705, 709 (S.D. Miss. 1975), *rev'd on other grounds*, 529 F.2d 359, *reh'g denied*, 532 F.2d 1375, *cert. denied*, 429 U.S. 979 (1976) (notice requirement of the Endangered Species Act satisfied even though plaintiff's letter to appropriate government agencies did not expressly state intention to file suit); *Metropolitan Washington Coalition for Clean Air v. District of Columbia*, 373 F.Supp. 1089 (D. D.C. 1974), *rev'd on other grounds*, 511 F.2d 809 (D.C. Cir. 1975) (notice requirement of Clean Air Act met even though notice sent by regular mail rather than by certified mail as required by applicable regulations).

In *Natural Resources Defense Council v. Callaway*, 524 F.2d 79 (2d Cir. 1975), plaintiffs filed suit under NEPA and the Clean Water Act to enjoin further dumping by the United States Navy of highly polluted dredged spoil at a designated dumping site in Long Island Sound. The district court held that it lacked jurisdiction to determine the merits of the Clean Water Act claim because the sixty-day notice requirement of the Act had not been met (plaintiffs had filed suit fifty days from the notice date). *Id.* at 83. The court of appeals rejected such a technical reading of the notice requirement and instead sought to determine whether the underlying purpose of the notice requirement, to give the agencies time to act, had been met. Noting that the administrative agencies had sufficient time to investigate plaintiffs' allegations prior to the filing of the complaint and had in fact informed plaintiffs that no administrative action would be taken, the court found that the purpose of the notice requirement had in fact been met.

[T]he purpose of the 60-day waiting period, which is to give the administrative agencies time to investigate and act on an alleged violation, has been served. The EPA and other agencies were given notice by plaintiffs

of the alleged violations and plaintiffs were informed before this suit was commenced that no action would be taken.

Id. at 84 n.4.¹⁰ *Cf. Proffitt v. Comm'rs, Township of Bristol*, 754 F.2d 504, 506 (3rd Cir. 1985) (where agencies had received reports of alleged violations three years before citizen suit was filed and plaintiff met with agency officials to discuss alleged violations five months prior to filing suit, defendants received notice-in-fact sufficient to satisfy Clean Water Act and RCRA notice requirements); *Pymatuning Water Shed Citizens for a Hygienic Environment v. Eaton*, 644 F.2d 995 (3d Cir. 1981) (sixty-day notice requirement of Clean Water Act met where district court stayed proceeding for sixty days, and eleven months elapsed before court began hearing evidence in the case).

In *Sierra Club v. Froehlke*, 534 F.2d 1289 (8th Cir. 1976), plaintiffs sought to enjoin construction of several proposed dams in the state of Missouri, claiming that the original environmental impact study was inadequate in its attempt to assess the effect of the dams on the region and on a species of bat native to that region. Defendants moved to dismiss the Endangered Species Act claim for lack of subject matter jurisdiction, alleging that plaintiffs had failed to give the requisite sixty-day notice. Although the district court did not dispute that sixty-day notice had not been given, it nonetheless denied defendants' motion, finding that, because of the unique nature of the evidence presented at trial, the motion should be denied in the interests of justice.

[C]onsidering the fact that there are only five or six experts in the study of Myotine Bats in the world and

10. Although the *Callaway* court did not ultimately rely on Section 505(a) of the Clean Water Act Amendments (containing the citizen suit provision), in finding that the trial court had subject matter jurisdiction to determine the merits of plaintiffs' claim, instead relying on the statute's "savings" clause, the court suggested in dictum that it would also have found jurisdiction under Section 505(a). *Id.* at 84 n.4.

that the habits, biology and other characteristics of the bats were fully developed at the trial, this Court feels that a dismissal of plaintiffs' claim for failure to comply with the time limit stated in the statute would work an injustice to the adjudication of plaintiffs' claim. To allow defendants to further prepare for trial, in the opinion of this Court, would produce no added evidence which would help this Court in its decision.

Id. at 1303, quoting *Sierra Club v. Froehlke*, 392 F.Supp. 130, 143 (E.D. Mo. 1975). The Eighth Circuit affirmed the district court's ruling, agreeing with the district court that the unique evidentiary situation involved in the case required a less formal reading of the notice requirement. *Id.* at 1303.

If there is a common thread running through all these cases, it is a willingness of the courts to respond to the exigencies of the case at hand and fashion a result that best serves the interests of justice while adhering to the underlying congressional purpose in enacting the citizen suit provisions. These courts do not ignore the sixty-day notice requirement, but instead look to the facts involved in the case to determine if the plaintiff has provided sufficient notice to afford the government agencies adequate opportunity to investigate the alleged violation and initiate enforcement action if necessary. In this way, Congress' intention to encourage government enforcement prior to the filing of a citizen suit is satisfied without risking the anomalous results that could arise from a formalistic jurisdictional reading of the notice requirement.¹¹

11. Under the pragmatic approach, a stay of the litigation will normally be sufficient to cure the deficient notice. However, in some circumstances it may instead be appropriate for the court, based on considerations such as the direct and adverse impact of continuing the action on the party not receiving notice, to dismiss the action altogether.

C. A Formalistic Jurisdictional Rule Would Needlessly Hamper Courts and Leave the Environment at Risk During the Sixty-Day Notice Period.

The flexibility afforded by the procedural approach to the notice requirement is particularly important during the sixty-day period following notice. Frequently, citizens do not uncover a statutory violation until the situation is critical. Although citizens can then notify the appropriate authorities immediately, the governmental response may be both insufficient and untimely. Under a jurisdictional approach, citizen plaintiffs in these situations would be compelled to await the expiration of the sixty-day notice period even if the government agencies explicitly declined to act.¹² Thus, the courts would be prevented from providing interim temporary relief to preserve the status quo during the sixty-day period. In the meantime, irreparable (and preventable) injury to the environment may result. This is a concern that a rigid jurisdictional rule does not adequately address.

D. The Notice Provision Speaks of Commencement of an Action, Not Judicial Jurisdiction, and Therefore is Subject to Pragmatic Construction Akin to the Principles Governing Exhaustion of Remedies.

12. In 1984, RCRA was amended to provide for an exception to the sixty-day notice requirement if the citizen suit is filed respecting a violation of RCRA Subchapter III (relating to the discharge of hazardous wastes). 42 U.S.C.A. § 6972(b)(1)(A) (West Supp. 1989). Although the 1984 amendment anticipates some emergency situations where citizens should be able to go to court without giving any notice whatsoever to halt a noncomplying activity, it is unlikely that Congress intended by inference that Subchapter III violations include the full range of harmful activities to which a court should respond immediately, unhindered by a jurisdictional requirement that the sixty days first run. Actions against government agencies to compel performance of mandatory duties and actions to enjoin violative activities are two very different actions, the former only indirectly (and belatedly) addressing the concerns of the latter. It is this latter type of action, actions to enjoin violative activities during the sixty-day period, which a formalistic jurisdictional rule would preclude, regardless of the nature of the harm threatened.

1. Congress Could Have Expressly Stated the Notice Provision as a Predicate to Jurisdiction But Did Not.

The enabling provision of RCRA's citizen suit statute, 42 U.S.C.A. § 6972(a) (West Supp. 1989), expressly provides that the "district court shall have *jurisdiction*, without regard to the amount in controversy or the citizenship of the parties, to enforce the permit, standard, regulation, condition, requirement, prohibition or order." (emphasis added). Such express jurisdictional language is in sharp contrast to RCRA's sixty-day notice requirement, 42 U.S.C.A. § 6972(b) (West Supp. 1989). This latter provision does not begin with the words "The court shall not have jurisdiction unless . . ." or words of similar import. Instead, the provision begins "No action may be commenced . . ." In fact, nowhere in the notice provision or elsewhere in the statute is federal court subject matter jurisdiction expressly precluded if an action is commenced prior to the expiration of the sixty-day notice period. This omission is for good reason: the notice provision is far more akin to an exhaustion of remedies requirement, subject to pragmatic construction and waiver, than a jurisdiction requirement. See *National Resources Defense Council v. Train*, 510 F.2d 692, 703 (D.C. Cir. 1975) ("the courts may properly give effect to the salutary purpose underlying the notice provision [of the Clean Water Act] by resorting to familiar doctrines such as those underpinning the requirement of exhaustion of administrative remedies.").

2. The Sixty-Day Notice Provision is Analogous to a Requirement that a Party First Exhaust All Administrative Remedies Before Commencing an Action; This Court has Consistently Held Such Requirements to be Procedural.

RCRA's requirement that sixty days notice be given before commencing a citizen suit is analogous to statutory requirements that a plaintiff exhaust all available administrative remedies before commencing the action. In each

case, Congress has required the would-be plaintiff to first complete a specified act, designed to relieve the burden on the court system, before he may commence the action. This Court has consistently held exhaustion statutes to be procedural and applied flexibly in accordance with the court's sound equitable discretion. *See, e.g., Mathews v. Eldridge*, 424 U.S. 319, 330 (1976); *Weinberger v. Salfi*, 422 U.S. 749, 76566 (1975). *See also Kennedy v. Whitehurst*, 690 F.2d 951, 961 (D.C. Cir. 1982) ("exhaustion requirements are *not* jurisdictional in nature but rather are statutory conditions precedent to the instigation of litigation") (emphasis included). Thus, they can be waived or held inapplicable in cases of emergency or when application would otherwise be futile or absurd. *See Coit Independent Joint Venture v. FSLIC*, No. 87-996, slip op. at 23 (Sup. Ct. March 21, 1989) ("Administrative remedies that are inadequate need not be exhausted."); *Honig v. Doe*, 484 U.S. 305 (1988) ("It is true that judicial review is normally not available under [20 U.S.C.A.] § 1415(e)(2) [of the Education of the Handicapped Act] until all administrative proceedings are completed, but as we have previously noted, parties may by-pass the administrative process where exhaustion would be futile or inadequate"); *Salfi*, 422 U.S. at 765-66 ("further exhaustion would not merely be futile for the applicant, but would also be a commitment of administrative resources unsupported by any administrative or judicial interest"); *McNeese v. Board of Education*, 373 U.S. 668, 674-76 (1963) (the requirement that administrative remedies be exhausted does not include the performance of clearly useless acts). *Cf. Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385, 393-94 (1982) (timely filing of charge of discrimination with EEOC not a jurisdictional prerequisite to suit in federal court, but instead is subject to waiver, estoppel, and equitable tolling).

The reasoning this Court has applied to its construction of the exhaustion of administrative remedies statutes applies to the sixty-day notice provision at issue in this

case. The kindred principles of exhaustion of remedies and prior notice should therefore be construed harmoniously.

E. Given Congress' Demonstrated Ability to Limit Federal Court Jurisdiction in Explicit Terms, its Nonjurisdictional Language in the Notice Provisions Should Not Be Converted into a Jurisdictional Barrier.

In the past, Congress has demonstrated that when it intends to limit federal court jurisdiction, it will do so in express terms, such as "Except as provided in this section, no court of the United States shall have jurisdiction . . .," a limitation that this Court has consistently upheld. *See Lockerty v. Phillips*, 319 U.S. 182, 18687 (1943) (upholding grant to Emergency Court of exclusive equity jurisdiction to restrain enforcement of price orders under Emergency Price Control Act of 1942); *Lauf v. E.G. Shinner & Co.*, 303 U.S. 323, 329 (1938) (upholding the limitations in the Norris-La Guardia Act, 29 U.S.C.A. § 107 (West 1983), that "No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, [except in strict conformity with the provisions of this chapter]."); *South Carolina v. Katzenbach*, 383 U.S. 301, 331-32 (1966) (upholding limit in the Voting Rights Act of 1965 to litigation in a single court in the District of Columbia).

Congress has also demonstrated its ability to limit the jurisdiction of federal courts by enacting express limitations in the very statutes that concern the jurisdiction and power of the federal courts, such as in the Tax Injunction Act, 28 U.S.C.A. § 1341 (West 1976) ("The district court shall not . . ."); the Johnson Act, 28 U.S.C.A. § 1342 (West 1976) ("the district court shall not . . ."); and the Anti-Injunction Act, 28 U.S.C.A. § 2283 (West 1978) ("a court of the United States may not . . ."). *See, e.g., California v. Grace Brethren Church*, 457 U.S. 393, 407, 411 (1982) (Tax Injunction Act); *Atlantic Coast Line Railroad Co. v. Brotherhood of Locomotive Engineers*, 398 U.S. 281, 294-95 (1970) (Anti-Injunction Act).

By contrast, RCRA's notice provision contains no jurisdictional language. It does not seek in jurisdictional terms to limit the power of the federal courts. In the absence of express language, this Court should not construe the notice provision to impose a jurisdictional barrier, particularly when to do so would advance no statutory purpose and create the possibility of absurd results. See *Avery v. Secretary of Health and Human Service*, 762 F.2d 158, 163 (1st Cir. 1985) ("[A]bsent a clear statement to the contrary, legislation should not ordinarily be interpreted to oust a federal court's equitable power, or its jurisdiction over a pending case." [Citing *Califano v. Yamasaki*, 442 U.S. 682, 705-06 (1979)]).

F. The Sixty-Day Notice Provision Should Not Be Construed to Allow Polluter Defendants Standing to Raise Technical Objections Applicable Not to Themselves But to Third Parties.

"[A] litigant must normally assert his own legal interests rather than those of third parties." *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 804 (1985). See *Warth v. Seldin*, 422 U.S. 490, 499 (1975) ("[T]he plaintiff generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights of third parties."). This rule prevents unnecessary and premature decisions and assures the court that the issues before it will be concrete and sharply presented. *Secretary of State of Maryland v. J.H. Munson Co.*, 467 U.S. 947, 955 (1984). This limitation can be relaxed, for example, "[w]here practical obstacles prevent a party from asserting rights on behalf of itself" *Id.* at 956.

By contrast, in this case the Respondent County of Tillamook, found by the district court below to be operating a landfill in violation of RCRA, is asserting the inadequacy of the notice not to itself but rather to the Administrator of the EPA and the Oregon Department of Environmental Quality. The Petitioners delivered complying notice to the County twelve months prior to the

commencement of the action. *Petition For Writ of Certiorari to the United States Court of Appeals for The Ninth Circuit*, at 4. Under the *jus tertii* rules of *Phillips* and *Munson*, the County has no standing to assert such an objection unless the objection is so fundamental as to be jurisdictional, which is not this case.

Indeed, it is inconceivable that Congress intended to allow polluter defendants to raise objections applicable not to themselves but to federal and state enforcement agencies. Upholding the County's objection in this case thus would contradict well-established standing limitations and advance no statutory purpose.¹³

IV.

AN INFLEXIBLE JURISDICTIONAL RULE WILL LEAD TO THE DISRUPTION OF CONGRESS' PURPOSE OF FOSTERING CITIZEN ENFORCEMENT UNDER AT LEAST EIGHTEEN OTHER MAJOR STATUTES

Unless the Court expressly limits its holding in this case to RCRA, its ruling is likely to be applied under at least eighteen other major regulatory statutes, including substantially all significant environmental statutes enacted since 1970,¹⁴ as well as statutes regulating such diverse areas as energy (the Energy Policy and Conservation Act,

13. Significantly, Congress included in the citizen suit section of RCRA and other environmental statutes a provision allowing private citizens to "intervene as a matter of right" in any enforcement action commenced by the government without any requirement of prior notice to the violator. See, e.g., 42 U.S.C.A. § 6972(b)(2) (West Supp. 1989). It seems fundamentally inconsistent for the County to raise the failure of the Petitioner to give notice to the Administrator of the EPA and to the Oregon Department of Environmental Quality as a barrier to jurisdiction when if either had actually commenced enforcement proceedings against the County, the Petitioners could have intervened without giving any notice whatsoever to the County.

14. See discussion *supra* at 5.

the Natural Gas Pipeline Safety Act and the Ocean Thermal Energy Conservation Act), consumer safety (the Consumer Product Safety Act) and civil defense (the Emergency Planning and Community Right-to-Know Act).¹⁵ *Amici* urge this Court to construe RCRA's sixty-day notice requirement as a procedural requirement and avoid a formalistic jurisdictional rule that could jeopardize effective enforcement of these statutes.¹⁶

Amici respectfully request further that this Court be cognizant of the potential impact its ruling likely will have on the future viability of citizen suits to prevent environmental harms.

A. The Endangered Species Act Affords a Striking Example of the Absurd and Harsh Results of a Formalistic Jurisdictional Rule.

Of all the notice provisions of the environmental statutes that could be affected by a ruling in this case, the Endangered Species Act presents perhaps the most compelling argument against a jurisdictional reading of the citizen suit notice provision. A formalistic jurisdictional rule would not only defeat Congress' express findings and declarations of purposes and policy, it could allow an endangered species to become extinct during the time that the federal courts were deprived of subject matter jurisdiction.

15. The citations to, and relevant portions of the citizen suit and notice provisions of, these statutes are reprinted alphabetically for the Court's information in Appendix B.

16. In the absence of any jurisdictional language, any need to advance a jurisdiction-limiting objective, or any evidence that the federal courts are burdened by litigation commenced without notice, the burden of persuading Congress to erect a jurisdictional barriers under these statutes should be on the government and the Respondent. Private citizens, whose aid Congress sought to enlist to protect the environment, should not be burdened with the task of persuading Congress to remove a jurisdictional barrier that the statutory language and purpose do not require and that will frustrate Congress' effort to obtain effective enforcement.

1. The Statutory Framework of the Endangered Species Act.

In *Tennessee Valley Authority v. Hill*, 437 U.S. 153, 180 (1978), this Court observed that the "Endangered Species Act of 1973 represented the most comprehensive legislation for the preservation of endangered species ever enacted by any nation." Congress required that "all Federal departments and agencies shall seek to conserve endangered and threatened species. . . ." 16 U.S.C.A. § 1531(c) (West 1985).¹⁷

In order to accomplish the stated objectives of the Endangered Species Act, Congress set forth various procedures for the listing of threatened and endangered species, the designation of critical habitat, and the development of recovery plans. 16 U.S.C.A. § 1533 (West 1985 & Supp. 1989). Once a species is listed by the Secretary of the Interior or the Secretary of Commerce, the species is expressly protected by the provisions of the Act or regulations promulgated thereunder. Section 9, 16 U.S.C.A. § 1538 (West 1985 & Supp. 1989), contains a list of acts prohibited by Congress in order to preserve and protect endangered species. Section 9 makes it unlawful for any person to "take" an endangered species of fish or wildlife.¹⁸ The prohibitions against taking apply to "any person subject to the jurisdiction of the United States," 16 U.S.C.A. § 1538(a)(1) (West 1985), which includes virtually

17. Congress defined "conserve" for the purposes of the Endangered Species Act to mean the "use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures. . . . [of the Endangered Species Act] are no longer necessary." 16 U.S.C.A. § 1532(3) (West 1985).

18. Congress defined "take" broadly, 16 U.S.C.A. § 1532(19) (West 1985), to include "harm," which the Secretary of the Interior has defined as "an act which actually kills or injures wildlife . . . [including] significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering." 50 C.F.R. § 17.3.

any private individual or association, state or local governmental agency and any federal government officer, department or agency. 16 U.S.C.A. § 1532(13) (West 1985).

Congress also required that each federal agency ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any federally listed species or adversely affect critical habitat for any listed species. 16 U.S.C.A. § 1536(a)(2) (West 1985). It established a consultation process that requires a federal agency whose proposed action potentially jeopardizes a federally listed species to consult with the Secretary of the Interior or the Secretary of Commerce concerning the effect of that action. 16 U.S.C.A. §§ 1536(a), 1536(b) (West 1985). Given the consultation process, the United States Fish and Wildlife Service plays a key enforcement role. It frequently renders a biological opinion concerning the impacts of a proposed project on a federally listed species. Because of the close working relationship between the United States Fish and Wildlife Service and other federal land management agencies such as the United States Forest Service and the Bureau of Land Management, the Secretary of the Interior rarely sues a sister agency to enforce the statute. Accordingly, when a federal agency is the potential defendant, the burden of enforcement falls primarily on concerned and willing citizens and their organizations.

2. The Citizen Suit Provision of the Endangered Species Act.

Three types of citizen suits may be brought to enforce the Endangered Species Act: (a) actions to enjoin any person, including the United States, who is alleged to be in violation of the Act or its implementing regulations, 16 U.S.C.A. § 1540(g)(1)(A) (West 1985), (b) actions to compel the Secretary of the Interior or the Secretary of Commerce to apply the prohibitions of the Act during the transition period immediately following the passage of the Act, 16 U.S.C.A. § 1540(g)(1)(B) (West 1985), and (c) actions to

compel the Secretary of the Interior or the Secretary of Commerce to perform a non-discretionary duty listed in section 4 of the Act (relating to the listing of threatened and endangered species, designation of critical habitat, development of recovery plans, and promulgation of implementing regulations), 16 U.S.C.A. § 1540(g)(1)(C) (West 1985). The overwhelming majority of citizen actions are injunction actions of the first type.¹⁹

3. Because Congress did not Intend to Permit a Species to Become Extinct During the Notice Period, a Pragmatic Rather Than a Jurisdictional Rule is Essential Under the Endangered Species Act.

A pragmatic approach to the Endangered Species Act citizen suit notice provision is essential. When injury to federally listed species could result in irreparable damage and perhaps extinction during the sixty-day period, federal courts should not be deprived of subject matter jurisdiction as a result of a inflexible, formalistic interpretation of the sixty-day notice provision. Congress did not intend to condition survival of a species on compliance with a notice provision.

19. The vast majority of courts interpreting the notice requirement of the Endangered Species have held that failure to strictly comply does not raise a jurisdictional barrier. See, e.g., *Sierra Club v. Froehlike*, 534 F.2d 1289, 1303 (8th Cir. 1976); *Sierra Club v. Block*, 614 F.Supp. 488, 492 (D. D.C. 1985) (Fish and Wildlife Service and Forest Service response to sixty-day notice letters sufficient to waive the requirement); *Village of Kaktovik v. Corps of Engineers*, 12 Env't Rep. Cas. (BNA) 1740, 1744 (D. Alaska, Dec. 29, 1978) (compliance with "the spirit of the notice requirements" when a suit was filed forty-two days after notice); *National Wildlife Federation v. Coleman*, 400 F.Supp. 705, 710 (S.D. Miss. 1975), *rev'd on other grounds*, 529 F.2d 359, *reh'g denied*, 532 F.2d 1375, *cert. denied*, 429 U.S. 979 (1976). *Contra Save the Yaak Comm. v. Block*, 840 F.2d 714, 721 (9th Cir. 1988); *Maine Audubon Society v. Porslow*, 672 F.Supp. 528, 531 (D. Maine 1987).

Often, when a federal agency is the recipient of an Endangered Species Act notice, the Secretary and the action agency will indicate that they have no intention of modifying their conduct. *See, e.g., Sierra Club v. Block*, 614 F.Supp. 488, 492 (D. D.C. 1985). In these circumstances, a formalistic jurisdictional rule would deprive the district court of jurisdiction until the sixty days elapsed. A species may become extinct while prospective plaintiffs await the termination of a sixty day standstill period and federal agencies proceed apace with their challenged activity.

Finally, a jurisdictional interpretation would prevent the district court from determining whether any deviation from the requisite form of notice is acceptable. For example, in a recent Ninth Circuit opinion, the court held that purported sixty-day notice letters "were not sent to the correct person, the secretary," *Save the Yaak Comm. v. Block*, 840 F.2d 714, 721 (9th Cir. 1988), despite the fact that the letters were sent to the representatives of the Secretary of the Interior most involved in the contested decision, the Regional Director of the United States Fish and Wildlife Service and the Supervisor of the National Forest. This jurisdictional approach elevates form over substance and vitiates the clear directives of Congress reflected in the Endangered Species Act.

CONCLUSION

Congress encourages and empowers citizens to augment government enforcement of environmental statutes. Its notice requirement should be construed pragmatically and in harmony with this purpose, not as a formalistic jurisdictional barrier. For the reasons set forth in this brief on behalf of *amici curiae*, the judgment of the court of appeals should be reversed with directions to allow the appeal to proceed on the merits.

Respectfully submitted,

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APPENDIX A

The respective interests of the *amici curiae* are as follows:

1. Sierra Club is a national conservation organization headquartered in San Francisco, California with more than 500,000 members. Sierra Club was organized in 1892 as a non-profit corporation and its stated purposes include the exploration, enjoyment and preservation of the scenic natural resources of the United States and the enlisting of public interest and cooperation in the protection of these natural resources. In furtherance of these purposes, and of the aesthetic, conservational and recreational interests of its members, Sierra Club has participated extensively in administrative and judicial proceedings intended to protect and preserve these natural resources, and the interests of its members therein, from the injurious acts of others. Specifically, Sierra Club has instituted and participated in numerous citizen suits to compel compliance with or adherence to the statutory requirements of the Resource Conservation and Recovery Act, 42 U.S.C.A. §§ 6901-6987 (West 1983 & Supp. 1989) ("RCRA"), and other major environment statutes such as the Endangered Species Act, 16 U.S.C.A. §§ 1531-1543 (West 1985 & Supp. 1989) ("ESA"), the Clean Air Act Amendments of 1970, 42 U.S.C.A. §§ 7401-7642 (West 1983 & Supp. 1989) ("Clean Air Act Amendments"), and the Federal Water Pollution Control Act, 33 U.S.C.A. §§ 1251-1375 (West 1986 & Supp. 1989) ("Clean Water Act"), including, for example, *Sierra Club v. Block*, 614 F. Supp. 488 (D.D.C. 1985); and *Sierra Club v. Hanna Furnace Corp.*, 636 F. Supp. 130 (E.D. Mo. 1975), *aff'd*, 534 F.2d 1289 (9th Cir. 1976). In addition, Sierra Club has actively participated in other major environmental litigation, including, for example, *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402 (1971), and *Sierra Club v. Morton*, 405 U.S. 727 (1972).

2. Defenders of Wildlife is a not-for-profit organization of over 65,000 members across the nation and overseas with its principal offices in Washington, D.C. where it was incorporated as Defenders of Furbearers in 1947. Its board is elected by the membership. It is dedicated to preserving wildlife and promoting humane treatment of wild animals, emphasizing appreciation and protection for all species in their ecological role within the natural environment. It pursues this purpose through research, education, litigation and legislation, within the limits of 501(c)(3) of the Internal Revenue Code. One its major program areas is the effort to reduce environmental hazards to wildlife including pesticides, oil and hazardous substances. On April 18, for example, Defenders, along with several other organizations, notified the Exxon Shipping Company of its intent to sue under RCRA in order to require expeditious action to protect wildlife from the spill from the Exxon Valdez. This situation may well require litigation in less than sixty days from the date of the accident in order to fulfill the purposes of that Act.

3. The National Audubon Society (Audubon) is a non-profit, national membership organization dedicated to the protection of the environment and wildlife, and to the conservation of natural resources. Incorporated under the laws of New York State, Audubon maintains its principal place of business at 950 Third Avenue, New York, New York 10022 and has offices in various other cities nationwide. Audubon has more than 550,000 members affiliated with over 500 chapters located throughout the United States and in several foreign countries. Audubon members and staff engage in a broad range of scientific studies, research projects and conservation education programs aimed at improving the understanding and appreciation of wetlands, wildlife habitat, clean air, hazardous waste control, and other environmental concerns. Audubon has actively participated in various legislative, judicial and administrative actions to ensure effective implementation of the laws designed to protect human health and the

environment, including RCRA, ESA, the Clean Air Act Amendments and the Clean Water Act.

4. The Natural Resources Defense Council, Inc. (NRDC) is a non-profit environmental membership organization incorporated under the laws of the State of New York. NRDC's principal office is located at 40 West 20th Street, New York, New York 10011, and also has offices in Washington, D.C. and San Francisco, California. NRDC has over 91,000 members nationwide and is dedicated to the defense and preservation of the human environment and the natural resources of the United States. NRDC's purposes include the monitoring and participating in federal agency decisionmaking to ensure that federal statutes enacted to protect the environment are fully implemented. Since its inception in 1970, NRDC has instituted or participated in numerous citizen suits to enforce compliance with the provisions of RCRA, ESA, The Clean Air Act Amendments, the Clean Water Act and other significant environmental statutes, including, for example, *Natural Resources Defense Council v. Callaway*, 524 F.2d 79 (2d Cir. 1975) and *Natural Resources Defense Council v. Train*, 510 F.2d 692 (D.C. Cir. 1975). NRDC has played a leading role in insuring that state and federal governments apply federal laws governing the management of toxic wastes. See, e.g., *Hazardous Waste Treatment Council et al. v. United States Environmental Protection Agency*, Civ. No. 86-1658 (D.C. Cir. Oct. 7, 1988).

5. The Wilderness Society (TWS) is a national non-profit citizens organization with more than 225,000 members nationwide. Headquartered in Washington D.C., TWS is dedicated to the preservation of wilderness and to the proper management of publicly-owned lands. TWS has participated extensively in administrative and judicial actions, including citizen suits, to enforce compliance with the provisions of ESA, the Clean Air Act, the Clean Water Act and other major environmental statutes.

APPENDIX B
STATUTES INVOLVED

I. Act to Prevent Pollution From Ships, 33 U.S.C.A. §§ 1901-1912 (West 1986 & Supp. 1989).

33 U.S.C.A. § 1910 *Legal Actions*

(a) Persons with adversely affected interests as plaintiffs; defendants

Except as provided in subsection (b) of this section, any person having an interest which is, or can be, adversely affected, may bring an action on his own behalf—

(1) against any person alleged to be in violation of the provisions of this chapter, or regulations issued hereunder;

(2) against the Secretary where there is alleged a failure of the Secretary to perform any act or duty under this chapter which is not discretionary with the Secretary;

(3) against the Secretary of the Treasury where there is alleged a failure of the Secretary of the Treasury to take action under section 1908(3) of this title.

(b) Commencement conditions

No action may be commenced under subsection (a) of this section—

(1) prior to 60 days after the plaintiff has given notice, in writing and under oath, to the alleged violator, the Secretary concerned, and the Attorney General; or

(2) if the Secretary has commenced enforcement or penalty action with respect to the alleged violation and is conducting such procedures diligently.

(Pub.L. 96-478, § 11, Oct. 21, 1980, 94 Stat. 2302)

II. Clean Air Act Amendments of 1970, 42 U.S.C.A. §§ 7401-7642 (West 1983 & Supp. 1989)

42 U.S.C. §§ 7401 *Congressional Findings and Declaration of Purpose*

(a) The Congress finds

(1) that the predominant part of the Nation's population is located in its rapidly expanding metropolitan and other urban areas, which generally cross the boundary lines of local jurisdictions and often extend into two or more States;

(2) that the growth in the amount and complexity of air pollution brought about by urbanization, industrial development, and the increasing use of motor vehicles, has resulted in mounting dangers to the public health and welfare, including injury to agricultural crops and livestock, damage to and the deterioration of property, and hazards to air and ground transportation;

(3) that the prevention and control of air pollution at its source is the primary responsibility of States and local governments; and

(4) that Federal financial assistance and leadership is essential for the development of cooperative Federal, State, regional, and local programs to prevent and control air pollution.

(b) The purposes of this subchapter are—

(1) to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population;

(2) to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution;

(3) to provide technical and financial assistance to State and local governments in connection with the development and execution of their air pollution prevention and control programs; and

(4) to encourage and assist the development and operation of regional air pollution control programs.

(July 4, 1955, c. 360, Title I, § 101, formerly § 1, as added Dec. 17, 1963, Pub.L. 88-206, § 1, 77 Stat. 392, and renumbered and amended Oct. 20, 1965, Pub.L. 89-272, Title I, § 101(2), (3), 79 Stat. 992; Nov. 21, 1967, Pub.L. 90-148, § 2, 81 Stat. 485)

42 U.S.C.A. § 7604 *Citizen Suits*

(a) Authority to bring civil action; jurisdiction

Except as provided in subsection (b) of this section, any person may commence a civil action on his own behalf—

(1) against any person (including (i) the United States, and (ii) any other governmental instrumentality or agency to the extent permitted by the Eleventh Amendment to the Constitution) who is alleged to be in violation of (A) an emission standard or limitation under this chapter or (B) an order issued by the Administrator or a State with respect to such a standard or limitation,

(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator, or

(3) against any person who proposes to construct or constructs any new or modified major emitting facility without a permit required under part C of subchapter I of this chapter (relating to significant deterioration of air quality) or part D of subchapter I of

this chapter (relating to nonattainment) or who is alleged to be in violation of any condition of such permit.

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such an emission standard or limitation, or such an order, or to order the Administrator to perform such act or duty, as the case may be.

(b) Notice

No action may be commenced

(1) under subsection (a)(1) of this section—

(A) prior to 60 days after the plaintiff has given notice of the violation (i) to the Administrator, (ii) to the State in which the violation occurs, and (iii) to any alleged violator of the standard, limitation, or order, or

(B) if the Administrator or State has commenced and is diligently prosecuting a civil action in a court of the United States or a State to require compliance with the standard, limitation, or order, but in any such action in a court of the United States any person may intervene as a matter of right.

(2) under subsection (a)(2) of this section prior to 60 days after the plaintiff has given notice of such action to the Administrator,

except that such action may be brought immediately after such notification in the case of an action under this section respecting a violation of section 7412(c)(1)(B) of this title or an order issued by the Administrator pursuant to section 7413(a) of this title. Notice under this subsection shall be given in such manner as the Administrator shall prescribe by regulation.

(c) Venue; Intervention by Administrator

(1) Any action respecting a violation by a stationary source of an emission standard or limitation or an order respecting such standard or limitation may be brought only in the judicial district in which such source is located.

(2) In such action under this section, the Administrator, if not a party, may intervene as a matter of right.

(d) Award of costs; security

The court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(e) Nonrestriction of other rights

Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any emission standard or limitation or to seek any other relief (including relief against the Administrator or a State agency). Nothing in this section or in any other law of the United States shall be construed to prohibit, exclude, or restrict any State, local, or interstate authority from—

(1) bringing any enforcement action or obtaining any judicial remedy or sanction in any State or local court, or

(2) bringing any administrative enforcement action or obtaining any administrative remedy or sanction in any State or local administrative agency, department or instrumentality,

against the United States, any department, agency, or instrumentality thereof, or any officer, agent, or employee

thereof under State or local law respecting control and abatement of air pollution. For provisions requiring compliance by the United States, departments, agencies, instrumentalities, officers, agents, and employees in the same manner as nongovernmental entities, see section 7418 of this title.

(f) Definition

For purposes of this section, the term "emission standard or limitation under this chapter" means—

(1) a schedule or timetable of compliance, emission limitation, standard of performance or emission standard,

(2) a control or prohibition respecting a motor vehicle fuel or fuel additive, or

(3) any condition or requirement of a permit under part C of subchapter I of this chapter (relating to nonattainment), any condition or requirement of section 7413(d) of this title (relating to primary nonferrous smelter orders), any condition or requirement under an applicable implementation plan relating to transportation control measures, air quality maintenance programs or vapor recovery requirements, section 7545(3) and (f) of this title (relating to fuels and fuel additives), section 7491 of this title (relating to visibility protection), any condition or requirement under part B of subchapter I of this chapter (relating to ozone protection), or any requirement under section 7411 or 7412 of this title (without regard to whether such requirement is expressed as an emission standard or otherwise).

which is in effect under this chapter (including a requirement applicable by reason of section 7418 of this title) or under an applicable implementation plan.

(July 14, 1955, c. 360, Title III, § 304, as added Dec. 31, 1970, Pub.L. 91-604, § 12(a), 84 Stat. 1706, and amended Aug. 7, 1977, Pub.L. 95-95, Title III, § 303

(a)-(c), 91 Stat. 771-772; Nov. 16, 1977, Pub.L. 95-190, § 14(a)(77), (78), 91 Stat. 1404)

III. Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C.A. §§ 9601-9675 (West 1983 & Supp. 1989).

42 U.S.C.A. § 9659 *Citizen Suits*

(a) Authority to bring civil actions

Except as provided in subsections (d) and (e) of this section and in section 9613(h) of this title (relating to timing of judicial review), any person may commence a civil action on his own behalf—

(1) against any person (including the United States and any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any standard, regulation, condition, requirement, or order which has become effective pursuant to this chapter (including any provision of an agreement under section 9620 of this title, relating to Federal facilities); or

(2) against the President or any other officer of the United States (including the Administrator of the Environmental Protection Agency and the Administrator of the ATSDR) where there is alleged a failure of the President or of such other officer to perform any act or duty under this chapter, including an act or duty under section 9620 of this title (relating to Federal facilities), which is not discretionary with the President or such other officer.

Paragraph (2) shall not apply to any act or duty under the provisions of section 9660 of this title (relating to research, development and demonstration).

(b) Venue

(1) Actions under subsection (a)(1)

Any action under subsection (a)(1) of this section shall be brought in the district court for the district in which the alleged violation occurred.

(2) Actions under subsection (a)(2)

Any action brought under subsection (a)(2) of this section may be brought in the United States District Court for the District of Columbia.

(d) Rules applicable to subsection (a)(1) actions

(1) Notice

No action may be commenced under subsection (a)(1) of this section before 60 days after the plaintiff has given notice of the violation to each of the following:

(A) The President.

(B) The State in which the alleged violation occurs.

(C) Any alleged violator of the standard, regulation, condition, requirement, or order concerned (including any provision of an agreement under section 9620 of this title).

Notice under this paragraph shall be given in such manner as the President shall prescribe by regulation.

(2) Diligent prosecution

No action may be commenced under paragraph (1) of subsection (a) of this section if the President has commenced and is diligently prosecuting an action under this chapter, or under the Solid Waste Disposal Act [42 U.S.C.A. § 6901 *et seq.*] to require compliance with the standard, regulation, condition, requirement, or order concerned (including any provision of an agreement under section 9620 of this title).

(e) Rules applicable to subsection (a)(2) actions

No action may be commenced under paragraph (2) of subsection (a) of this section before the 60th day following the date on which the plaintiff gives notice to the Administrator or other department, agency, or instrumentality that the plaintiff will commence such action. Notice under this subsection shall be given in such manner as the President shall prescribe by regulation.

(Pub.L. 96-510, Title III, § 310, as added Pub.L. 99-499, Title II, § 206, Oct. 17, 1986, 100 Stat. 1703)

IV. Consumer Product Safety Act, 15 U.S.C.A. §§ 2051-2083 (West 1982 & Supp. 1989).

15 U.S.C.A. § 2073 *Private Enforcement*

Any interested person (including any individual or nonprofit, business, or other entity) may bring an action in any United States district court for the district in which the defendant is found or transacts business to enforce a consumer product safety rule or an order under section 2064 of this title, and to obtain appropriate injunctive relief. Not less than thirty days prior to the commencement of such action, such interested person shall give notice by registered mail to the Commission, to the Attorney General, and to the person against whom such action is directed. Such notice shall state the nature of the alleged violation of any such standard or order, the relief to be requested, and the court in which the action will be brought. No separate suit shall be brought under this section if at the time the suit is brought the same alleged violation is the subject of a pending civil or criminal action by the United States under this chapter. In any action under this section the court may in the interest of justice award the costs of suit, including reasonable attorneys' fees (determined in accordance with section 2060(f) of this title) and reasonable expert witnesses' fees.

(Pub.L. 92-573, § 24, Oct. 27, 1972, 86 Stat. 1226; Pub.L. 94-284, § 10(d), May 11, 1976, 90 Stat. 507; Pub.L. 97-35, Title XII, § 1211(a), (h)(3)(C), Aug. 13, 1981, 95 Stat. 721, 723)

V. Deepwater Port Act, 33 U.S.C.A. §§ 1501-1524 (West 1986 & Supp. 1989).

33 U.S.C.A. § 1501 *Congressional Declaration of Policy*

(a) It is declared to be the purposes of the Congress in this chapter to—

(1) authorize and regulate the location, ownership, construction, and operation of deepwater ports in waters beyond the territorial limits of the United States;

(2) provide for the protection of the marine and coastal environment to prevent or minimize any adverse impact which might occur as a consequence of the development of such ports;

(3) protect the interests of the United States and those of adjacent coastal States in the location, construction, and operation of deepwater ports; and

(4) protect the rights and responsibilities of States and communities to regulate growth, determine land use, and otherwise protect the environment in accordance with law.

(b) The Congress declares that nothing in this chapter shall be construed to affect the legal status of the high seas, the superjacent airspace, or the seabed and subsoil, including the Continental Shelf.

(Pub.L. 93-627, § 2, Jan. 3, 1975, 88 Stat. 2126)

33 U.S.C.A. § 1515 *Citizen Civil Action*

(a) Equitable relief; case or controversy; district court jurisdiction

Except as provided in subsection (b) of this section, any person may commence a civil action for equitable relief on his own behalf, whenever such action constitutes a case or controversy—

(1) against any person (including (A) the United States, and (B) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any provision of this chapter or any condition of a license issued pursuant to this chapter; or

(2) against the Secretary where there is alleged a failure of the Secretary to perform any act or duty under this chapter which is not discretionary with the Secretary. Any action brought against the Secretary under this paragraph shall be brought in the district court for the District of Columbia or the district of the appropriate adjacent coastal State.

In suits brought under this chapter, the district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce any provision of this chapter or any condition of a license issued pursuant to this chapter, or to order the Secretary to perform such act or duty, as the case may be.

(b) Notice; Intervention of right by person

No civil action may be commenced—

(1) under subsection (a)(1) of this section—

(A) prior to 60 days after the plaintiff has given notice of the violation (i) to the Secretary and (ii) to any alleged violator; or

(B) if the Secretary or the Attorney General has commenced and is diligently prosecuting a

civil or criminal action with respect to such matters in a court of the United States, but in any such action any person may intervene as a matter of right; or

(2) under subsection (a)(2) of this section prior to 60 days after the plaintiff has given notice of such action to the Secretary.

Notice under this subsection shall be given in such a manner as the Secretary shall prescribe by regulation.

(Pub.L. 93-627, § 16, Jan 3, 1975, 88 Stat. 2140)

VI. Deep Seabed Hard Mineral Resources Act, 30 U.S.C.A. §§ 1401-1473 (West 1986 & Supp. 1989).

30 U.S.C.A. § 1427 *Civil Actions*

(a) Equitable relief

Except as provided in subsection (b) of this section, any person may commence a civil action for equitable relief on that person's behalf in the United States District Court for the District of Columbia—

(1) against any person who is alleged to be in violation of any provision of this chapter or any condition of a license or permit issued under this subchapter; or

(2) against the Administrator when there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary,

if the person bringing the action has a valid legal interest which is or may be adversely affected by such alleged violation or failure to perform. In suits brought under this subsection, the district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce the provisions of the chapter, or any term, condition, or restriction of a license or permit issued under this subchapter, or to order the Administrator

to perform such act or duty.

(b) Notice

No civil action may be commenced—

(1) under subsection (a)(1) of this section—

(A) prior to 60 days after the plaintiff has given notice of the alleged violation to the Administrator and to any alleged violator; or

(B) if the Administrator or the Attorney General has commenced and is diligently prosecuting a civil or criminal action with respect to the alleged violation in a court of the United States; except that in any such civil action, any person having a valid legal interest which is or may be adversely affected by the alleged violation may intervene; or

(2) under subsection (a)(2) of this section, prior to 60 days after the plaintiff has given notice of such action to the Administrator.

Notice under this subsection shall be given in such a manner as the Administrator shall prescribe by regulation.

(Pub.L. 96-283, Title I, §117, June 28, 1980, 94 Stat. 573)

VII. Emergency Planning and Community Right-to-Know Act, 42 U.S.C.A. §§ 11001-11050 (West Supp. 1989).

42 U.S.C.A. § 11046 Civil Actions

(a) Authority to bring civil actions

(1) Citizen suits—Except as provided in subsection (e) of this section, any person may commence a civil action on his own behalf against the following:

(A) An owner or operator of a facility for failure to do any of the following:

(i) Submit a followup emergency notice under section 11004(c) of this title.

(ii) Submit a material safety data sheet or a list under section 11021(a) of this title.

(iii) Complete and submit an inventory form under section 11022(a) of this title containing tier I information as described in section 11022(d)(1) of this title unless such requirement does not apply by reason of the second sentence of section 11022(a)(2) of this title.

(iv) Complete and submit a toxic chemical release form under section 11023(a) of this title.

(B) The Administrator for failure to do any of the following:

(i) Publish inventory forms under section 11022(g) of this title.

(ii) Respond to a petition to add or delete a chemical under section 11023(e)(1) of this title within 180 days after receipt of the petition.

(iii) Publish a toxic chemical release form under section 11023(g) of this title.

(iv) Establish a computer database in accordance with section 11023(j) of this title.

(v) Promulgate trade secret regulations under section 11042(c) of this title.

(vi) Render a decision in response to a petition under section 11042(d) of this title within 9 months after receipt of the petition.

(d) Notice

(1) No action may be commenced under subsection (a)(1)(A) of this section prior to 60 days after the plaintiff has given notice of the alleged violation to the

Administrator, the State in which the alleged violation occurs, and the alleged violator. Notice under this paragraph shall be given in such manner as the Administrator shall prescribe by regulation.

(2) No action may be commenced under subsection (a)(1)(B) of this section or (a)(1)(C) of this section prior to 60 days after the date on which the plaintiff gives notice to the Administrator, State Governor, or State emergency response commission (as the case may be) that the plaintiff will commence the action. Notice under this paragraph shall be given in such manner as the Administrator shall prescribe by regulation.

(Pub.L. 99-499, Title III, § 326, Oct. 17, 1986, 100 Stat. 1755)

VIII. Endangered Species Act, 16 U.S.C.A. §§ 1532-1543
(West 1985 & Supp. 1989).

16 U.S.C.A. § 1531 *Congressional Findings and Declarations of Purposes and Policy*

(a) Findings

That Congress finds and declares that—

(1) various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation;

(2) other species of fish, wildlife, and plants have been so depleted in numbers that they are in danger of or threatened with extinction;

(3) these species of fish, wildlife, and plants are of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people;

(4) the United States has pledged itself as a sovereign state in the international community to conserve to the extent practicable the various species of fish or wildlife and plants facing extinction, pursuant to—

(A) migratory bird treaties with Canada and Mexico;

(B) the Migratory and Endangered Bird Treaty with Japan;

(C) the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere;

(D) the International Convention for the Northwest Atlantic Fisheries;

(E) the International Convention for the High Seas Fisheries of the North Pacific Ocean;

(F) the Convention on International Trade in Endangered Species of Wild Fauna and Flora; and

(G) other international agreements; and

(5) encouraging the States and other interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs which meet national and international standards is a key to meeting the Nation's international commitments and to better safeguarding, for the benefit of all citizens, the Nation's heritage in fish, wildlife, and plants.

(b) Purposes

The purposes of this chapter are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in subsection (a) of this section.

(c) Policy

(1) It is further declared to be the policy of Congress that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this chapter.

(2) It is further declared to be the policy of Congress that Federal agencies shall cooperate with State and local agencies to resolve water resource issues in concert with conservation of endangered species.

(Pub.L. 93-205, § 2, Dec. 28, 1973, 87 Stat. 884; Pub.L. 96-159, § 1, Dec. 28, 1979, 93 Stat. 1225; Pub.L. 97-304, § 9(a), Oct. 13, 1982, 96 Stat. 1426; as amended Pub.L. 100-478, Title II, § 1013(a), Oct. 7, 1988, 102 Stat. 2315.)

16 U.S.C.A. § 1540 *Penalties and Enforcement*

(g) Citizen suits

(1) Except as provided in paragraph (2) of this subsection any person may commence a civil suit on his own behalf—

(A) to enjoin any person, including the United States and any other governmental instrumentality or agency (to the extent permitted by the eleventh amendment to the Constitution), who is alleged to be in violation of any provision of this chapter or regulation issued under the authority thereof; or

(B) to compel the Secretary to apply, pursuant to section 1535(g)(2)(B)(ii) of this title, the prohibitions set forth in or authorized pursuant to section 1533(d) or 1538(a)(1)(B) of this title with respect to the taking of any resident endangered species or threatened species within any State; or

(C) against the Secretary where there is alleged a failure of the Secretary to perform any act or duty under section 1533 of this title which is not discretionary with the Secretary.

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce any such provision or regulation, or to order the Secretary to perform such act or duty, as the case may be. In any civil suit commenced under subparagraph (B) the district court shall compel the Secretary to apply the prohibition sought if the court finds that the allegation that an emergency exists is supported by substantial evidence.

(2) (A) No action may be commenced under subparagraph (1)(A) of this section—

(i) prior to sixty days after written notice of the violation has been given to the Secretary, and to any alleged violator of any such provision or regulation;

(ii) if the Secretary has commenced action to impose a penalty pursuant to subsection (a) of this section; or

(iii) if the United States has commenced and is diligently prosecuting a criminal action in a court of the United States or a State to redress a violation of any such provision or regulation.

(B) No action may be commenced under subparagraph (1)(B) of this section—

(i) prior to sixty days after written notice has been given to the Secretary setting forth the reasons why an emergency is thought to exist with respect to an endangered species or a threatened species in the State concerned; or

(ii) if the Secretary has commenced and is diligently prosecuting action under section

1535(g)(2)(B)(ii) of this title to determine whether any such emergency exists.

(C) No action may be commenced under subparagraph (1)(C) of this section prior to sixty days after written notice has been given to the Secretary; except that such action may be brought immediately after such notification in the case of an action under this section respecting an emergency posing a significant risk to the well-being of any species of fish or wildlife or plants.

(3) (A) Any suit under this subsection may be brought in the judicial district in which the violation occurs.

(B) In any such suit under this subsection in which the United States is not a party, the Attorney General, at the request of the Secretary, may intervene on behalf of the United States as a matter of right.

(4) The court, in issuing any final order in any suit brought pursuant to paragraph (1) of this subsection, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

(5) The injunctive relief provided by this subsection shall not restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any standard or limitation or to seek any other relief (including relief against the Secretary or a State agency).

(Pub.L. 93-205, § 11, Dec. 28, 1973, 87 Stat. 897; Pub.L. 94-359, § 4, July 12, 1976, 90 Stat. 913; Pub.L. 95-632, §§ 6-8, Nov. 10, 1978, 92 Stat. 3761, 3762; Pub.L. 97-79, § 9(e), Nov. 16, 1981, 95 Stat. 1079; Pub.L. 97-304, §§ 7, 9(c), Oct. 13, 1982, 96 Stat. 1425, 1427; Pub.L. 98-327, § 4, June 25, 1984, 98 Stat. 271

as amended Pub.L. 100-478, Title I, § 1007, Oct. 7, 1988, 102 Stat. 2309.)

IX. Energy Policy and Conservation Act, 42 U.S.C.A. §§ 6201-6422 (West 1983 & Supp. 1989).

42 U.S.C.A. § 6201 Congressional Statement of Purpose

The purposes of this chapter are—

(1) to grant specific authority to the President, subject to congressional review, to impose rationing, to reduce demand for energy through the implementation of energy conservation plans, and to fulfill obligations of the United States under the international energy program;

(2) to provide for the creation of a Strategic Petroleum Reserve capable of reducing the impact of severe energy supply interruptions;

(3) to increase the supply of fossil fuels in the United States, through price incentives and production requirements;

(4) to conserve energy supplies through energy conservation programs, and, where necessary, the regulation of certain energy uses;

(5) to provide for improved energy efficiency of motor vehicles, major appliances, and certain other consumer products;

(6) to reduce the demand for petroleum products and natural gas through programs designed to provide greater availability and use of this Nation's abundant coal resources; and

(7) to provide a means for verification of energy data to assure the reliability of energy data.

(Pub.L. 94-163, § 2, Dec. 22, 1975, 89 Stat. 874.)

42 U.S.C.A. § 6305 *Citizen Suits*

(a) Civil actions; jurisdiction

Except as otherwise provided in subsection (b) of this section, any person may commence a civil action against—

(1) any manufacturer or private labeler who is alleged to be in violation of any provision of this part or any rule under this part;

(2) any Federal agency which has a responsibility under this part where there is an alleged failure of such agency to perform any act or duty under this part which is not discretionary; or

(3) the Secretary in any case in which there is an alleged failure of the Secretary to comply with a nondiscretionary duty to issue a proposed or final rule according to the schedules set forth in section 6295 of this title; and

The United States district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such provision or rule, or order such Federal agency to perform such act or duty, as the case may be. The courts shall advance on the docket, and expedite the disposition of, all causes filed therein pursuant to paragraph (3) of this subsection. If the court finds that the Secretary has failed to comply with a deadline established in section 6295 of this title, the court shall have jurisdiction to order appropriate relief, including relief that will ensure the Secretary's compliance with future deadlines for the same covered product.

(b) Notice

No action may be commenced—

(1) under subsection (a)(1) of this section—

(A) prior to 60 days after the date on which the plaintiff has given notice of the violation (i) to the Secretary, (ii) to the Commission, and (iii) to any alleged violator of such provision or rule; or

(B) if the Commission has commenced and is diligently prosecuting a civil action to require compliance with such provision or rule, but, in any such action, any person may intervene as a matter of right.

(2) under subsection (a)(2) of this section prior to 60 days after the date on which the plaintiff has given notice of such action to the Secretary and Commission.

Notice under this subsection shall be given in such manner as the Commission shall prescribe by rule.

(Pub.L. 94-163, Title III, § 335, Dec. 22, 1975, 89 Stat. 930; Pub.L. 95-619, Title IV, § 425(f), Title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3266, 3288; Pub.L. 100-12, §§ 8, 11(b), Mar. 17, 1987, 101 Stat. 122, 126)

X. Federal Water Pollution Control Act, 33 U.S.C.A. §§ 1251-1387 (West 1986 & Supp. 1989)

33 U.S.C.A. § 1251 *Congressional Declaration of Goals and Purpose*

(a) Restoration and maintenance of chemical, physical and biological integrity of Nation's waters; national goals for achievement of objective

The objective of this chapter is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. In order to achieve this objective it is hereby declared that, consistent with the provisions of this chapter

(1) it is the national goal that the discharge of pollutants into the navigable waters be eliminated by 1985;

(2) it is the national goal that wherever attainable, an interim goal of water quality which provides for the

protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983;

(3) it is the national policy that the discharge of toxic pollutants in toxic amounts be prohibited;

(4) it is the national policy that Federal financial assistance be provided to construct publicly owned waste treatment works;

(5) it is the national policy that areawide waste treatment management planning processes be developed and implemented to assure adequate control of sources of pollutants in each State;

(6) it is the national policy that a major research and demonstration effort be made to develop technology necessary to eliminate the discharge of pollutants into the navigable waters, waters of the contiguous zone, and the oceans; and

(7) it is the national policy that programs for the control of nonpoint sources of pollution be developed and implemented in an expeditious manner so as to enable the goals of this chapter to be met through the control of both point and nonpoint sources of pollution.

(b) Congressional recognition, preservation, and protection of primary responsibilities and rights of States

It is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources, and to consult with the Administrator in the exercise of his authority under this chapter. It is the policy of Congress that the States manage the construction grant program under this chapter and implement the permit programs under sections 1342 and 1344 of this title. It is further the policy of the Congress to support and aid research relating

to the prevention, reduction, and elimination of pollution, and to provide Federal technical services and financial aid to State and interstate agencies and municipalities in connection with the prevention, reduction, and elimination of pollution.

(c) Congressional policy toward Presidential activities with foreign countries

It is further the policy of Congress that the President, acting through the Secretary of State and such national and international organizations as he determines appropriate, shall take such action as may be necessary to insure that to the fullest extent possible all foreign countries shall take meaningful action for the prevention, reduction, and elimination of pollution in their waters and in international waters and for the achievement of goals regarding the elimination of discharge of pollutants and the improvement of water quality to at least the same extent as the United States does under its laws.

(d) Administrator of Environmental Protection Agency to administer chapter

Except as otherwise expressly provided in this chapter, the Administrator of the Environmental Protection Agency (hereinafter in this chapter called "Administrator") shall administer this chapter.

(e) Public participation in development, revision, and enforcement of any regulation, etc.

Public participation in the development, revision, and enforcement of any regulation, standard, effluent limitation, plan, or program established by the Administrator or any State under this chapter shall be provided for, encouraged, and assisted by the Administrator and the States. The Administrator, in cooperation with the States, shall develop and publish regulations specifying minimum guidelines for public participation in such processes.

(f) Procedures utilized for implementing chapter

It is the national policy that to the maximum extent possible the procedures utilized for implementing this chapter shall encourage the drastic minimization of paperwork and interagency decision procedures, and the best use of available manpower and funds, so as to prevent needless duplication and unnecessary delays at all levels of government.

(g) Authority of States over water

It is the policy of Congress that the authority of each State to allocate quantities of water within its jurisdiction shall not be superseded, abrogated or otherwise impaired by this chapter. It is the further policy of Congress that nothing in this chapter shall be construed to supersede or abrogate rights to quantities of water which have been established by any State. Federal agencies shall cooperate with State and local agencies to develop comprehensive solutions to prevent, reduce and eliminate pollution in concert with programs for managing water resources.

(June 30, 1948, c. 758, Title I, § 101, as added Oct. 18, 1972, Pub.L. 92-500, § 2, 86 Stat. 816, and amended Dec. 27, 1977, Pub.L. 95-217, §§ 5(a), 26(b), 91 Stat. 1567, 1575; Feb. 4, 1987, Pub.L. 100-4, Title III, § 316(b), 101 Stat. 60.)

33 U.S.C.A. § 1365 *Citizen Suits*

(a) Authorization; jurisdiction

Except as provided in subsection (b) of this section, any citizen may commence a civil action on his own behalf

(1) against any person (including (i) the United States, and (ii) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of (A) an effluent standard or limitation under this chapter or (B) an order issued by the Administrator or a State with respect to such a standard or limitation, or

(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator.

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such an effluent standard or limitation, or such an order, or to order the Administrator to perform such act or duty, as the case may be, and to apply any appropriate civil penalties under section 1319(d) of this title.

(b) Notice

No action may be commenced

(1) under subsection (a)(1) of this section—

(A) prior to sixty days after the plaintiff has given notice of the alleged violation (i) to the Administrator, (ii) to the State in which the alleged violation occurs, and (iii) to any alleged violator of the standard, limitation, or order, or

(B) if the Administrator or State has commenced and is diligently prosecuting a civil or criminal action in a court of the United States, or a State to require compliance with the standard, limitation, or order, but in any such action in a court of the United States any citizen may intervene as a matter of right.

(2) under subsection (a)(2) of this section prior to sixty days after the plaintiff has given notice of such action to the Administrator,

except that such action may be brought immediately after such notification in the case of an action under this section respecting a violation of sections 1316 and 1317(a) of this title. Notice under this subsection shall be given in such manner as the Administrator shall prescribe by regulation.

(June 30, 1948, c. 758, Title V, § 505, as added Oct. 18, 1972, Pub.L. 92-500, § 2, 86 Stat. 888; as amended Feb. 4, 1987, Pub.L. 100-4, Title V, §§ 502(a), 303, 101 Stat. 73)

XI. Marine Protection, Research and Sanctuaries Act, 33 U.S.C.A. §§ 1401-1445 (West 1986 & Supp. 1989).

33 U.S.C.A. § 1401 *Congressional Finding, Policy, and Declaration of Purpose*

(a) Dangers of unregulated dumping

Unregulated dumping of material into ocean waters endangers human health, welfare, and amenities, and the marine environment, ecological systems, and economic potentialities.

(b) Policy of regulation and prevention or limitation

The Congress declares that it is the policy of the United States to regulate the dumping of all types of materials into ocean waters and to prevent or strictly limit the dumping into ocean waters of any material which would adversely affect human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities.

(c) Regulation of dumping and transportation for dumping purposes

It is the purpose of this chapter to regulate (1) the transportation by any person of material from the United States and, in the case of United States vessels, aircraft, or agencies, the transportation of material from a location outside the United States, when in either case the transportation is for the purpose of dumping the material into ocean waters, and (2) the dumping of material transported by any person from a location outside the United States, if the dumping occurs in the territorial sea or the contiguous zone of the United States.

(Pub.L. 92-532, § 2, Oct. 23, 1972, 86 Stat. 1052, Pub.L. 93-254, § 1(1), Mar. 22, 1974, 88 Stat. 50.)

33 U.S.C.A. § 1415 *Penalties*

(g) Civil Suits by private persons

(1) Except as provided in paragraph (2) of this subsection any person may commence a civil suit on his own behalf to enjoin any person, including the United States and any other governmental instrumentality or agency (to the extent permitted by the eleventh amendment to the Constitution), who is alleged to be in violation of any prohibition, limitation, criterion, or permit established or issued by or under this subchapter. The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such prohibition, limitation, criterion, or permit, as the case may be.

(2) No action may be commenced

(A) prior to sixty days after notice of the violation has been given to the Administrator or to the Secretary, and to any alleged violator of the prohibition, limitation, criterion, or permit; or

(B) if the Attorney General has commenced and is diligently prosecuting a civil action in a court of the United States to require compliance with the prohibition, limitation, criterion, or permit; or

(C) if the Administrator has commenced action to impose a penalty pursuant to subsection (a) of this section, or if the Administrator, or the Secretary, has initiated permit revocation or suspension proceedings under subsection (f) of this section; or

(D) if the United States has commenced and is diligently prosecuting a criminal action in a

court of the United States or a State to redress a violation of this subchapter.

(3) (A) Any suit under this subsection may be brought in the judicial district in which the violation occurs.

(B) In any such suit under this subsection in which the United States is not a party, the Attorney General, at the request of the Administrator or Secretary, may intervene on behalf of the United States as a matter of right.

(4) The court, in issuing any final order in any suit brought pursuant to paragraph (1) of this subsection may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

(5) The injunctive relief provided by this subsection shall not restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any standard or limitation or to seek any other relief (including relief against the Administrator, the Secretary, or a State agency).

(Pub.L. 92-532, Title I, [0015] 105, Oct. 23, 1972, 86 Stat. 1057)

XII. National Environmental Policy Act, 42 U.S.C.A. §§ 4321-4370a (West 1977 & Supp. 1989).

42 U.S.C.A. § 4321 *Congressional declaration of purpose*

The purposes of this chapter are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and

welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

Pub.L. 91-190, § 2, Jan. 1, 1970, 83 Stat. 852.

42 U.S.C.A. § 4331 *Congressional Declaration of National Environmental Policy*

(a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is in the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this chapter, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may—

(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;

(3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

Pub.L. 91-190, Title I, § 101, Jan. 1, 1970, 83 Stat. 852.

XIII. Natural Gas Pipeline Safety Act, 49 U.S.C.A. §§ 1671-1687 (West 1976 & Supp. 1989).

49 U.S.C.A. § 1686 *Civil Actions by Citizens*

(a) Mandatory or prohibitive injunctive relief against persons in violation of this chapter

Except as provided in subsection (b) of this section, any person may commence a civil action for mandatory or prohibitive injunctive relief, including interim equitable relief, against any other person (including any State, municipality, or other governmental entity to the extent permitted by the eleventh amendment to the Constitution, and the United States) who is alleged to be in violation of this chapter or of any order or regulation issued under this chapter. The district courts of the United States shall have

jurisdiction over actions brought under this section, without regard to the amount in controversy or the citizenship of the parties.

(b) Restrictions

No civil action may be commenced under subsection (a) of this section with respect to any alleged violation of this chapter or any order or regulation issued under this chapter—

(1) prior to the expiration of 60 days after the plaintiff has given notice of such alleged violation to the Secretary (or to the applicable State agency in the case of a State which has been certified under section 1674(a) of this title and in which the violation is alleged to have occurred), and to any person who is alleged to have committed such violation; or

(2) if the Secretary (or such State agency) has commenced and is diligently pursuing administrative proceedings or the Attorney General of the United States (or the chief law enforcement officer of such State) has commenced and is diligently pursuing judicial proceedings with respect to such alleged violation.

Notice under this subsection shall be given in such manner as the Secretary shall prescribe by regulation.

(Pub.L. 90-481, § 19, formerly § 17, as added Pub.L. 94-477, § 8, Oct. 11, 1976, 90 Stat. 2075, and renumbered Pub.L. 96-129, Title 1, § 104(b), Nov. 30, 1979, 93 Stat. 992)

XIV. Noise Control Act 42 U.S.C.A. §§ 4901-4918 (West 1983 & Supp. 1989).

42 U.S.C. § 4901 *Congressional Findings and Statement of Policy*

(a) The Congress finds—

(1) that inadequately controlled noise presents a growing danger to the health and welfare of the Nation's population, particularly in urban areas;

(2) that the major sources of noise include transportation vehicles and equipment, machinery, appliances, and other products in commerce; and

(3) that, while primary responsibility for control of noise rests with State and local governments, Federal action is essential to deal with major noise sources in commerce control of which require national uniformity of treatment.

(b) The Congress declares that it is the policy of the United States to promote an environment for all Americans free from noise that jeopardizes their health or welfare. To that end, it is the purpose of this chapter to establish a means for effective coordination of Federal research and activities in noise control, to authorize the establishment of Federal noise emission standards for products distributed in commerce, and to provide information to the public respecting the noise emission and noise reduction characteristics of such products.

(Pub.L. 92-574, § 2, Oct. 27, 1972, 86 Stat. 1234)

42 U.S.C.A. § 4911 *Citizens Suits*

(a) Authority to commence suits

Except as provided in subsection (b) of this section, any person (other than the United States) may commence a civil action on his own behalf—

(1) against any person (including (A) the United States, and (B) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any noise control requirement (as defined in subsection (e) of this section) or

(2) against—

(A) the Administrator of the Environmental Protection Agency where there is alleged a failure of such Administrator to perform any act or duty under this chapter which is not discretionary with such Administrator, or

(B) the Administrator of the Federal Aviation Administration where there is alleged a failure of such Administrator to perform any act or duty under section 1431 of Title 49 which is not discretionary with such Administrator

The district courts of the United States shall have jurisdiction, without regard to the amount in controversy, to restrain such person from violating such noise control requirement or to order such Administrator to perform such act or duty, as the case may be.

(b) Notice

No action may be commenced—

(1) under subsection (a)(1) of this section—

(A) prior to sixty days after the plaintiff has given notice of the violation (i) to the Administrator of the Environmental Protection Agency (and to the Federal Aviation Administrator in the case of a violation of a noise control requirement under such section 1431 of Title 49) and (ii) to any alleged violator of such requirement, or

(B) if an Administrator has commenced and is diligently prosecuting a civil action to require compliance with the noise control requirement, but in any such action in a court of the United States any person may intervene as a matter of right, or

(2) under subsection (a)(2) of this section prior to sixty days after the plaintiff has given notice to the defendant that he will commence such action.

Notice under this subsection shall be given in such manner

as the Administrator of the Environmental Protection Agency shall prescribe by regulation.

(Pub.L. 92-574, [0015] 12, Oct. 27, 1972, 86 Stat. 1243)

XV. Ocean Thermal Energy Conservation Act, 42 U.S.C.A. §§ 9101-9168 (West 1983 & Supp. 1989).

42 U.S.C.A. § 9101 Congressional Declaration of Policy

(a) It is declared to be the purposes of the Congress in this chapter to—

(1) authorize and regulate the construction, location, ownership, and operation of ocean thermal energy conversion facilities connected to the United States by pipeline or cable, or located in the territorial sea of the United States consistent with the Convention on the High Seas, and general principles of international law;

(2) authorize and regulate the construction, location, ownership, and operation of ocean thermal energy conversion plantships documented under the laws of the United States, consistent with the Convention on the High Seas and general principles of international law;

(3) authorize and regulate the construction, location, ownership, and operation of ocean thermal energy conversion plantships by United States citizens, consistent with the Convention on the High Seas and general principles of international law;

(4) establish a legal regime which will permit and encourage the development of ocean thermal energy conversion as a commercial energy technology;

(5) provide for the protection of the marine and coastal environment, and consideration of the interests of ocean users, to prevent or minimize any adverse

impact which might occur as a consequence of the development of such ocean thermal energy conversion facilities or plantships;

(6) make applicable certain provisions of the Merchant Marine Act, 1936 (46 U.S.C. 1177 *et seq.*) [46 U.S.C.A. § 1101 *et seq.*] to assist in financing of ocean thermal energy conversion facilities and plantships;

(7) protect the interests of the United States in the location, construction, and operation of ocean thermal energy conversion facilities and plantships; and

(8) protect the rights and responsibilities of adjacent coastal States in ensuring that Federal actions are consistent with approved State coastal zone management programs and other applicable State and local laws.

(b) The Congress declares that nothing in this chapter shall be construed to affect the legal status of the high seas, the superjacent airspace, or the seabed and subsoil, including the Continental Shelf.

(Pub.L. 96-320, § 2, Aug. 3, 1980, 94 Stat. 974.)

42 U.S.C.A. § 9124 Civil Actions

(a) Jurisdiction

Except as provided in subsection (b) of this section, any person having a valid legal interest which is or may be adversely affected may commence a civil action for equitable relief on his own behalf in the United States District Court for the District of Columbia whenever such action constitutes a case or controversy—

(1) against any person who is alleged to be in violation of any provision of this chapter or any regulation or condition of a license issued pursuant to this chapter; or

(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary.

In suits brought under this chapter, the district courts of the United States shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce any provision of this chapter or any regulation or term or condition of a license issued pursuant to this chapter, or to order the Administrator to perform such act or duty, as the case may be.

(b) Notice

No civil action may be commenced—

(1) under subsection (a)(1) of this section—

(A) prior to 60 days after the plaintiff has given notice of the violation to the Administrator and to any alleged violator; or

(B) if the Administrator or the Attorney General has commenced and is diligently prosecuting a civil or criminal action with respect to such matters in a court of the United States, but in any such action any person may intervene as a matter of right; or

(2) under subsection (a)(2) of this section prior to 60 days after the plaintiff has given notice of such action to the Administrator.

Notice under this subsection shall be given in such a manner as the Administrator shall prescribe by regulation.

(Pub.L. 96-320, Title I, § 114, Aug. 3, 1980, 94 Stat. 990)

XVI. Outer Continental Shelf Lands Act, 43 U.S.C.A. §§ 1301-1356 (West 1983 & Supp. 1989).

43 U.S.C.A. § 1349 *Citizen Suits, Jurisdiction and Judicial Review*

(a) Persons who may bring actions; persons against whom action may be brought; time of action; intervention by Attorney General; costs and fees; security

(1) Except as provided in this section, any person having a valid legal interest which is or may be adversely affected may commence a civil action on his own behalf to compel compliance with this subchapter against any person, including the United States, and any other governmental instrumentality or agency (to the extent permitted by the eleventh amendment to the Constitution) for any alleged violation of any provision of this subchapter, or any regulation promulgated under this subchapter, or of the terms of any permit or lease issued by the Secretary under this subchapter.

2) Except as provided in paragraph (3) of this subsection, no action may be commenced under subsection (a)(1) of this section—

(A) prior to sixty days after the plaintiff has given notice of the alleged violation, in writing under oath, to the Secretary and any other appropriate Federal official, to the State in which the violation allegedly occurred or is occurring, and to any alleged violator; or

(B) if the Attorney General has commenced and is diligently prosecuting a civil action in a court of the United States or a State with respect to such matter, but in any such action in a court of the United States any person having a legal interest which is or may be adversely affected may intervene as a matter of right.

(3) An action may be brought under this subsection immediately after notification of the alleged violation in any case in which the alleged violation

constitutes an imminent threat to the public health or safety or would immediately affect a legal interest of the plaintiff.

(4) In any action commenced pursuant to this section, the Attorney General, upon the request of the Secretary or any other appropriate Federal official, may intervene as a matter of right.

(5) A court, in issuing any final order in any action brought pursuant to subsection (a)(1) or subsection (c) of this section, may award costs of litigation, including reasonable attorney and expert witness fees, to any party, whenever such court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in a sufficient amount to compensate for any loss or damage suffered, in accordance with the Federal Rules of Civil Procedure.

(6) Except as provided in subsection (c) of this section, all suits challenging actions or decisions allegedly in violation of, or seeking enforcement of, the provisions of this subchapter, or any regulation promulgated under this subchapter, or the terms of any permit or lease issued by the Secretary under this subchapter, shall be undertaken in accordance with the procedures described in this subsection. Nothing in this section shall restrict any right which any person or class of persons may have under any other Act or common law to seek appropriate relief.

(Aug. 7, 1953, C. 345, § 23, added Sept. 18, 1978, Pub.L. 95-372, Title II, § 208, 92 Stat. 657, and amended Nov. 8, 1984, Pub.L. 98-620, Title IV, § 402(44), 98 Stat. 3360)

XVII. Resource Conservation and Recovery Act, 42 U.S.C.A. §§ 6901-6987 (West 1983 & Supp. 1989).

42 U.S.C.A. § 6902 Objectives

The objectives of this chapter are to promote the protection of health and the environment and to conserve valuable material and energy resources by:

(1) providing technical and financial assistance to State and local governments and interstate agencies for the development of solid waste management plans (including resource recovery and resource conservation systems) which will promote improved solid waste management techniques (including more effective organizational arrangements), new and improved methods of collection, separation, and recovery of solid waste, and the environmentally safe disposal of non-recoverable residues;

(2) providing training grants in occupations involving the design, operation, and maintenance of solid waste disposal systems;

(3) prohibiting future open dumping on the land and requiring the conversion of existing open dumps to facilities which do not pose a danger to the environment or to health;

(4) regulating the treatment, storage, transportation, and disposal of hazardous wastes which have adverse effects on health and the environment;

(5) providing for the promulgation of guidelines for solid waste collection, transport, separation, recovery, and disposal practices and systems;

(6) promoting a national research and development program for improved solid waste management and resource conservation techniques, more effective organizational arrangements, and new and improved methods of collection, separation, and recovery, and recycling of solid wastes and environmentally safe disposal of nonrecoverable residues;

(7) promoting the demonstration, construction and application of solid waste management, resource recovery, and resource conservation systems which preserve and enhance the quality of air, water, and land resources; and

(8) establishing a cooperative effort among the Federal, State, and local governments and private enterprise in order to recover valuable materials and energy from solid waste.

(Pub.L. 89-272, Title II, § 1003, as added Pub.L. 94-580, § 2, Oct. 21, 1976, 90 Stat. 2798)

42 U.S.C.A. § 6972 *Citizens Suits*

(a) In general

Except as provided in subsection (b) or (c) of this section any person may commence a civil action on his own behalf—

(1) (A) against any person (including (a) the United States and (b) any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any permit, standard, regulation, condition, requirement, prohibition, or order which has become effective pursuant to this chapter; or

(B) against any person, including the United States and any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution, and including any past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility, who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment; or

(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator.

Any action under paragraph (a)(1) of this subsection shall be brought in the district court for the district in which the alleged violation occurred or the alleged endangerment may occur. Any action brought under paragraph (a)(2) of this subsection may be brought in the district court for the district in which the alleged violation occurred or in the District Court of the District of Columbia. The district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce the permit, standard, regulation, condition, requirement, prohibition, or order, referred to in paragraph (1)(A), to restrain any person who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste referred to in paragraph (1)(B), to order such person to take such other action as may be necessary, or both, or to order the Administrator to perform the act or duty referred to in paragraph (2), as the case may be, and to apply any appropriate civil penalties under section 6928(a) and (g) of this title.

(b) Actions prohibited

(1) No action may be commenced under subsection (a)(1)(A) of this section—

(A) prior to 60 days after the plaintiff has given notice of the violation to—

(i) the Administrator;

(ii) the State in which the alleged violation occurs; and

(iii) to any alleged violator of such permit, standard, regulation, condition, requirement, prohibition, or order,

except that such action may be brought immediately after such notification in the case of an action under this section respecting a violation of subchapter III of this chapter; or

(B) if the Administrator or State has commenced and is diligently prosecuting a civil or criminal action in a court of the United States or a State to require compliance with such permit, standard, regulation, condition, requirement, prohibition, or order.

In any action under subsection (a)(1)(A) of this section in a court of the United States, any person may intervene as a matter of right.

(2) (A) No action may be commenced under subsection (a)(1)(B) of this section prior to ninety days after the plaintiff has given notice of the endangerment to—

(i) the Administrator;

(ii) the State in which the alleged endangerment may occur;

(iii) any person alleged to have contributed or to be contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste referred to in subsection (a)(1)(B) of this section,

except that such action may be brought immediately after such notification in the case of an action under this section respecting a violation of subchapter III of this chapter.

(B) No action may be commenced under subsection (a)(1)(B) of this section if the Administrator, in order to restrain or abate acts or conditions which may have contributed or are contributing to

the activities which may present the alleged endangerment—

(i) has commenced and is diligently prosecuting an action under section 6973 of this title or under section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [42 U.S.C.A. § 9606];

(ii) is actually engaging in a removal action under section 104 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 [42 U.S.C.A. § 9604];

(iii) has incurred costs to initiate a Remedial Investigation and Feasibility Study under section 104 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 [42 U.S.C.A. § 9604] and is diligently proceeding with a remedial action under that Act [42 U.S.C.A. § 9601 *et seq.*]; or

(iv) has obtained a court order (including a consent decree) or issued an administrative order under section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 [42 U.S.C.A. § 9606] or section 6973 of this title pursuant to which a responsible party is diligently conducting a removal action, Remedial Investigation and Feasibility Study (RIFS), or proceeding with a remedial action.

In the case of an administrative order referred to in clause (iv), actions under subsection (a)(1)(B) of this section are prohibited only as to the scope and duration of the administrative order referred to in clause (iv).

(C) No action may be commenced under subsection (a)(1)(B) of this section if the State, in order to restrain or abate acts or conditions which may

have contributed or are contributing to the activities which may present the alleged endangerment—

(i) has commenced and is diligently prosecuting an action under subsection (a)(1)(B) of this section;

(ii) is actually engaging in a removal action under section 104 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 [42 U.S.C.A. § 9604]; or

(iii) has incurred costs to initiate a Remedial Investigation and Feasibility Study under section 104 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 [42 U.S.C.A. § 9604] and is diligently proceeding with a remedial action under that Act [42 U.S.C.A. § 9601 *et seq.*].

(D) No action may be commenced under subsection (a)(1)(B) of this section by any person (other than a State or local government) with respect to the siting of a hazardous waste treatment, storage, or a disposal facility, nor to restrain or enjoin the issuance of a permit for such facility.

(E) In any action under subsection (a)(1)(B) of this section in a court of the United States, any person may intervene as a matter of right when the applicant claims an interest relating to the subject of the action and he is so situated that the disposition of the action may, as a practical matter, impair or impede his ability to protect that interest, unless the Administrator or the State shows that the applicant's interest is adequately represented by existing parties.

(F) Whenever any action is brought under subsection (a)(1)(B) of this section in a court of the United States, the plaintiff shall serve a copy of

the complaint on the Attorney General of the United States and with the Administrator.

(Pub.L. 89-272, Title II, § 7003, as added Pub.L. 94-580, § 2, Oct. 21, 1976, 90 Stat. 2826, and amended Pub.L. 95-609, § 7(q), Nov. 8, 1978, 92 Stat. 3083; Pub.L. 96-482, § 25, Oct. 21, 1980, 94 Stat. 2348, and Pub.L. 98-616, Title IV, § 401, Nov. 8, 1984, 98 Stat. 3268)

XVIII. Safe Drinking Water Act, 42 U.S.C.A. §§ 300f-300j-10 (West 1982 & Supp. 1989).

42 U.S.C.A. § 300j-8 *Citizens Civil Action*

Persons subject to civil action; jurisdiction of enforcement proceedings

(a) Except as provided in subsection (b) of this section, any person may commence a civil action on his own behalf—

(1) against any person (including (A) the United States, and (B) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any requirement prescribed by or under this subchapter, or

(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this subchapter which is not discretionary with the Administrator.

No action may be brought under paragraph (1) against a public water system for a violation of a requirement prescribed by or under this subchapter which occurred within the 27-month period beginning on the first day of the month in which this subchapter is enacted. The United States district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the

parties, to enforce in an action brought under this subsection any requirement prescribed by or under this subchapter or to order the Administrator to perform an act or duty described in paragraph (2), as the case may be.

Conditions for commencement of civil action; notice

(b) No civil action may be commenced—

(1) under subsection (a)(1) of this section respecting violation of a requirement prescribed by or under this subchapter—

(A) prior to sixty days after the plaintiff has given notice of such violation (i) to the Administrator, (ii) to any alleged violator of such requirement and (iii) to the State in which the violation occurs, or

(B) if the Administrator, the Attorney General, or the State has commenced and is diligently prosecuting a civil action in a court of the United States to require compliance with such requirement, but in any such action in a court of the United States any person may intervene as a matter of right; or

(2) under subsection (a)(2) of this section prior to sixty days after the plaintiff has given notice of such action to the Administrator.

Notice required by this subsection shall be given in such manner as the Administrator shall prescribe by regulation. No person may commence a civil action under subsection (a) of this section to require a State to prescribe a schedule under section 300g-4 or 300g-5 of this title for a variance or exemption, unless such person shows to the satisfaction of the court that the State has in a substantial number of cases failed to prescribe such schedules.

(July 1, 1944, c. 373, Title XIV, § 1443, as added Dec. 16, 1974, Pub.L. 93-523, § 2(a), 88 Stat. 1690, and

amended Nov. 16, 1977, Pub.L. 95-190, § 8(c), 91 Stat. 1397; Nov. 8, 1984, Pub.L. 98-620, Title IV, § 402(38), 98 Stat. 3360.)

XIX. Surface Mining Control and Reclamation Act, 33 U.S.C.A. §§ 1201-1328 (West 1986 & Supp. 1989).

30 U.S.C.A. § 1202 *Statement of Purpose*

It is the purpose of this chapter to—

(a) establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations;

(b) assure that the rights of surface landowners and other persons with a legal interest in the land or appurtenances thereto are fully protected from such operations;

(c) assure that surface mining operations are not conducted where reclamation as required by this chapter is not feasible;

(d) assure that surface coal mining operations are so conducted as to protect the environment;

(e) assure that adequate procedures are undertaken to reclaim surface areas as contemporaneously as possible with the surface coal mining operations;

(f) assure that the coal supply essential to the Nation's energy requirements, and to its economic and social well-being is provided and strike a balance between protection of the environment and agricultural productivity and the Nation's need for coal as an essential source of energy;

(g) assist the States in developing and implementing a program to achieve the purposes of this chapter;

(h) promote the reclamation of mined areas left without adequate reclamation prior to August 3, 1977, and which continue, in their unreclaimed condition, to substantially degrade the quality of the environment, prevent

or damage the beneficial use of land or water resources, or endanger the health or safety of the public;

(i) assure that appropriate procedures are provided for the public participation in the development, revision, and enforcement of regulations, standards, reclamation plans, or programs established by the Secretary or any State under this chapter;

(j) provide a means for development of the data and analyses necessary to establish effective and reasonable regulation of surface mining operations for other minerals;

(k) encourage the full utilization of coal resources through the development and application of underground extraction technologies;

(l) stimulate, sponsor, provide for and/or supplement present programs for the conduct of research investigations, experiments, and demonstrations, in the exploration, extraction, processing, development, and production of minerals and the training of mineral engineers and scientists in the field of mining, minerals resources, and technology, and the establishment of an appropriate research and training center in various States; and

(m) wherever necessary, exercise the full reach of Federal constitutional powers to insure the protection of the public interest through effective control of surface coal mining operations.

(Pub.L. 95-87, Title I, § 102, Aug. 3, 1977, 91 Stat. 448.)

30 U.S.C.A. § 1270 *Citizens Suits*

(a) Civil action to compel compliance with this chapter

Except as provided in subsection (b) of this section, any person having an interest which is or may be adversely affected may commence a civil action on his own behalf to compel compliance with this chapter—

(1) against the United States or any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution which is alleged to be in violation of the provisions of this chapter or of any rule, regulation, order or permit issued pursuant thereto, or against any other person who is alleged to be in violation of any rule, regulation, order or permit issued pursuant to this subchapter, or

(2) against the Secretary or the appropriate State regulatory authority to the extent permitted by the eleventh amendment to the Constitution where there is alleged a failure of the Secretary or the appropriate State regulatory authority to perform any act or duty under this chapter which is not discretionary with the Secretary or with the appropriate State regulatory authority.

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties.

(b) Limitation on bringing of action

No action may be commenced—

(1) under subsection (a)(1) of this section—

(A) prior to sixty days after the plaintiff has given notice in writing of the violation (i) to the Secretary, (ii) to the State in which the violation occurs, and (iii) to any alleged violator, or

(B) if the Secretary or the State has commenced and is diligently prosecuting a civil action in a court of the United States or a State to require compliance with the provisions of this chapter, or any rule, regulation, order, or permit issued pursuant to this chapter, but in any such action in a court of the United States any person may intervene as a matter of right; or

(2) under subsection (a)(2) of this section prior to sixty days after the plaintiff has given notice in writing of such action to the Secretary, in such manner as the Secretary shall by regulation prescribe, or to the appropriate State regulatory authority, except that such action may be brought immediately after such notification in the case where the violation or order complained of constitutes an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff.

(Pub.L. 95-87, Title I, [0015] 520, Aug. 3, 1977, 91 Stat. 447)

XX. Toxic Substance Control Act 15 U.S.C.A. §§ 2601-2671 (West 1982 & Supp. 1989).

15 U.S.C.A. § 2601 Findings, Policy and Intent

(a) Findings—The Congress finds that—

(1) human beings and the environment are being exposed each year to a large number of chemical substances and mixtures;

(2) among the many chemical substances and mixtures which are constantly being developed and produced, there are some whose manufacture, processing, distribution in commerce, use, or disposal may present an unreasonable risk of injury to health or the environment; and

(3) the effective regulation of interstate commerce in such chemical substances and mixtures also necessitates the regulation of intrastate commerce in such chemical substances and mixtures.

(b) Policy—It is the policy of the United States that—

(1) adequate data should be developed with respect to the effect of chemical substances and mixtures on health and the environment and that the development of such data should be the responsibility of those who manufacture and those who process such chemical substances and mixtures;

(2) adequate authority should exist to regulate chemical substances and mixtures which present an unreasonable risk of injury to health or the environment, and to take action with respect to chemical substances and mixtures which are imminent hazards; and

(3) authority over chemical substances and mixtures should be exercised in such a manner as not to impede unduly or create unnecessary economic barriers to technological innovation while fulfilling the primary purpose of this chapter to assure that such innovation and commerce in such chemical substances and mixtures do not present an unreasonable risk of injury to health or the environment.

(c) Intent of Congress—It is the intent of Congress that the Administrator shall carry out this chapter in a reasonable and prudent manner, and that the Administrator shall consider the environmental, economic, and social impact of any action the Administrator takes or proposes to take under this chapter.

(Pub.L. 94-469, § 2, Oct. 11, 1976, 90 Stat. 2003.)

15 U.S.C.A. § 2619 Citizens Civil Actions

(a) In general—Except as provided in subsection (b) of this section, any person may commence a civil action—

(1) against any person (including (A) the United States, and (B) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of this chapter or any rule promulgated under section 2603, 2604, or 2605 of this title or order issued under section 2604 of this title to restrain such violation, or

(2) against the Administrator to compel the Administrator to perform any act or duty under this chapter which is not discretionary.

Any civil action under paragraph (1) shall be brought in the United States district court for the district in which the alleged violation occurred or in which the defendant resides or in which the defendant's principal place of business is located. Any action brought under paragraph (2) shall be brought in the United States District Court for the District of Columbia or the United States district court for the judicial district in which the plaintiff is domiciled. The district courts of the United States shall have jurisdiction over suits brought under this section, without regard to the amount in controversy or the citizenship of the parties. In any civil action under the subsection process may be served on a defendant in any judicial district or which the defendant resides or may be found and subpoenas for witnesses may be served in any judicial district.

(b) Limitation—No civil action may be commenced

(1) under subsection (a)(1) of this section to restrain a violation of this chapter or rule or order under this chapter—

(A) before the expiration of 60 days after the plaintiff has given notice of such violation (i) to the Administrator, and (ii) to the person who is alleged to have committed such violation, or

(B) if the Administrator has commenced and is diligently prosecuting a proceeding for the issuance of an order under section 2635(a)(2) of this title to require compliance with this chapter or with such rule or order or if the Attorney General has commenced and is diligently prosecuting a civil action in a court of the United States to require compliance with this chapter or with such rule or order, but if such proceeding or civil action is commenced after the giving of notice, any person giving such notice may intervene as a matter of right in such proceeding or action; or

(2) Under subsection (a)(2) of this section before the expiration of 60 days after the plaintiff has given notice to the Administrator or the alleged failure of the Administrator to perform an act or duty which is the basis for such action or, in the case of an action under such subsection for the failure of the Administrator to file an action under section 2606 of this title, before the expiration of ten days after such notification.

Notice under this subsection shall be given in such manner as the Administrator shall prescribe by rule.

(Pub.L. 94-469, Title I, § 20, Oct. 11, 1976, 90 Stat. 2041, redesignated and amended Pub.L. 99-519, § 3(b)(3),(c)(1), Oct. 22, 1986, 100 Stat. 2989)